

The Court: Does it refresh your recollection as you look at it?

The Witness: Only as to the date. The letters don't indicate that they were written from Cincinnati.

Q. Well, look at the one on page 259, No. 121.

A. Oh, yes.

Q. That was from Cincinnati? A. That is mentioned there, and the date appears to be Cincinnati.

4124

Mr. Abbott: If your Honor please, I object to the stating of the contents of these letters.

The Court: He cannot do that, of course. The witness may look at it. You needn't mention out loud, Mr. Waddell, you can look at it and the question is whether or not it refreshes your recollection on the subject about which you are being interrogated.

Q. The witness had stated there was nothing to indicate it was from Cincinnati, that is what that question was? A. Yes, that letter that you mentioned indicates it was from Cincinnati.

4125

Q. Well, now, look at that again. Do you know anything about what prices were being made by the Birmingham Powder Company in November, 1898? A. The only thing I know about—

Q. One minute. I didn't ask you what you knew. I asked you did you know it in November, did you know that in the month of November? A. No, I was not familiar with that detail.

Q. That is what I asked you. A. No.

Q. Won't you look at page 270, No. 130, and state whether or not you know anything about the prices that were being made in February 1, 1899, by the Birmingham Company? A. No.

Q. Now, I wish you would look at No. 144 on page 285 and state whether you have any recollection of writing a letter of which that is a copy.

A. No, I have no recollection beyond what the book says, I have not any independent memory of it.

4127 Q. Now, will you look at No. 148 on page 289 and state whether or not you have any recollection in regard to the prices made by the Birmingham Powder Company in November, 1899? Then, Mr. Waddell, you are not prepared to testify as to the exact prices in that district, and who made them, are you? A. No.

Q. Was that mill built for the purpose of being sold out to the du Pont Company? A. I don't know whether it was, I don't think so.

Q. Well, some of these mills were, weren't they? A. Well, I never knew of mills that were built for that purpose, no. I never heard anyone declaring any such idea.

Q. Never did? A. No.

4128 Q. Well, do you know just when the Birmingham mill—some stock in that company was purchased? A. Yes, I know about the time the mills were bought.

Q. About when was that? A. Well, it was towards the latter part of the nineties. I cannot remember the exact date.

Q. Very well. A. It was bought by Mr. Hamlin.

Q. Now, you have spoken of a couple of trips that you made to the Pocahontas district, so-called. Where was that located, Mr. Waddell? A. The Pocahontas district was on the Norfolk & Western Railroad, between Huntington, West Virginia, and Pocahontas, Virginia, about 175 or 200 miles east of the Ohio River.

Q. And the operations there were in bituminous coal? A. Bituminous coal, yes.

Q. And about how many mines were there in that district? A. At the time I visited it last, about—there were about forty companies in the field, some of them had two or three mines each, I should judge.

Q. And they pooled, that is, they had some mutual arrangement among themselves, didn't they? A. They had a selling agency, but not a pool.

Q. Known as the Pocahontas Coal Company? A. Pocahontas Company, I think it was. The name may have been "Coal Company." 4130

Q. And that took in at the date of your last trip, about all the operations in that valley? A. No, not all of them, no, sir; United States Steel Company went in there with a number of mines. Some were outside of the Pocahontas Company.

Q. Now, that inquiry about that Pocahontas trip was drawn out by your statement, as I recollect it, that you went down there and made—together with a representative of the King Powder Company in 1902, July 14th, and made practically all of the list of contracts that appear in evidence here, being the last exhibit in this Moxham list, was that correct? A. No, I corrected that testimony. I first went there with a representative of the King Powder Company about June, 1897—Joe French, and we made a contract with all those people, King, Hazard and du Pont, for five years, which terminated in June, 1902. I again visited the valley at—first I mentioned that I had gone with Joe French of the King Company, but it was with Pickard of the King Mercantile Company, which was the du Pont and Laffin & Rand Company, selling King output, and we renewed the contract in 1902 for three years. 4131

Q. Now, you have corrected your testimony again to the effect that your first trip was in 1897. A. Yes, I stated the other day 1899, I think.

4132

R. S. Waddell—Cross

Q. Your statements were as follows: Your first statement was that you took a trip in 1902, your first trip along in 1899 with a certain gentleman. Your correction was that the two trips, the dates had been quite correct, but you made a mistake in one of the people who accompanied you, that is the correction you made. Now you still further change it, saying that trip was two years earlier still. A. My impression was that all of the contracts were three-year contracts, that would be 1899, 1902 and 1905, but in looking at the record, rather at the minutes of the meeting, where I was authorized in 1897, I found in the minutes I was sent there in 1897 for five years, the first was a five-year contract.

4133

Q. Then your statement, a few minutes ago, that you had already corrected your testimony was not quite correct, you now desire to correct it, is that what you mean? A. I want to get it correct.

4134

Q. You say now you desire to change it in that regard? A. I desire to say that I went there in the summer of 1897 with Joe French, the first visit, and made the contract originally with about thirty or thirty-five companies for five years. My impression was when I testified before, that it was for three years.

Q. Five-year contracts? A. They expired in 1902, and when I was at Wilmington, Del., in 1902, I left in July, 1902, and went to Cincinnati, and then was joined by Mr. Pickard and went over and renewed contracts for three years up to July, 1905.

Q. Now, if we get it straight, your first trip was 1897, and you made five-year contracts; and went there in 1902 and you made three-year contracts? A. Yes, sir.

Q. In each instance with some representative of the King Powder Company? A. Well, it was not the King Powder Company, it was the King pow-

der, but not the King Powder Company.

Q. Now, on this first trip the negotiations for those contracts were with the Pocahontas people and they had begun before Mr. Rood left your employ, hadn't they? A. No, I think—I am very sure that Rood left our employ about February or March 1, 1897, and the contracts with the Pocahontas people were made—along about June, 1897.

Q. The correspondence shows, that we have produced here, that Mr. Rood left your employ April 30, 1897; I know contracts were made later, but my inquiry is, were not the negotiations leading up to those contracts begun before Mr. Rood left you, and in fact begun by Mr. Rood himself while in your employ? A. I don't remember as to that.

4136

Q. Therefore— A. I think not, because the contract system was not in vogue at that time.

Q. That was just the point of your testimony, wasn't it? A. No, I was giving this as a part of the great volume of contracts.

Q. And it is for that reason that you think that it is impossible that that situation could have originated before the contract system came into vogue, as you understand it and as you have just stated it, is that correct? A. That is a little bit muddy to me, how is that again?

4137

Q. (Repeated by the reporter.) A. If you are talking about individual contracts, or contracts with a customer, that means one thing and if you are talking about a system that we have enumerated all together for contracting the whole of the country, that is quite a different proposition.

Q. I understand. A. I made the contracts, individual contracts, as I have testified, for special amounts and for specific carloads and for a dozen carloads and whatever it may be or might be, but that was not the system, general plan of the rebate system.

Q. You are talking about something else, Mr. Waddell? A. No. I want to get clear on that. There is a distinction between making individual contracts and adopting the system by the associated powder companies.

Q. Very likely. And fixing the general plan. Very likely. A. And I know Mr. Rood was not with us when that general plan was adopted.

4139

Q. My question is whether these Pocahontas contracts originated as the results of the contract system as you call it or whether they did not have their origin prior to that date? A. There may have been correspondence or talk of the separate contracts in there, but the system was adopted by the Powder Association as a general plan——

Q. I have not asked you about that. A. And I made application to them for the Pocahontas powder privilege of applying the system to the Pocahontas field, then I have made one——

4140

Q. I may have misunderstood your testimony, Mr. Waddell, but I gathered from it on your direct examination, that these contracts would not have been possible in the absence of this association scheme of contracts, and that they were the direct result of it, is that your present statement? A. We were prohibited from contracting future supplies of powder all agencies.

Q. Then your statement, what is it? A. We had to go to the principal to get a right to make a contract for a carload.

Q. You continually talk about the general situation and I am talking about this particular Pocahontas contract. A. These were made in the summer of 1897 after I had applied to the Powder Association through the Hazard and du Pont Companies and had been granted the authority to make them.

Q. Possibly. Don't you recollect that negotiations in regard thereto had been going on for several months previous thereto? A. Not for that kind of a contract, oh, no.

Q. But don't you recollect that Mr. Tierney and the people who were running the Pocahontas Syndicate demanded that you come down there and make some contract with them so that they could know what they were going to get it for? A. There may have been local arrangements for the Pocahontas field, but it is not the system I am talking about.

4142

Q. But is it your statement, that you and this representative of the King Company had allotted to each one of you certain particular contracts—companies which you could contract with by the association? A. By the association?

Q. Yes. A. No.

Q. The fact is, that you and Mr. King's representative went down through that valley, is it not, and solicited all the business and left it to the particular customer to say who he would make a contract with, was not that the situation? A. No, I will give you the situation.

4143

Q. Very good. A. The way the contract was made: Joe French and I went through the Valley, and we there found customers that had been using Chattanooga, du Pont, Hazard and King powders. Under the rules of the association, it was the company that sold the largest amount of powder during the preceding two years, that was allotted that customer. We could not decide who these customers belonged to, and it was a question down there how we would make the contracts. I think the first contracts were signed, when we found a customer for three different powders, we made him sign three different contracts, one with the Hazard, one with the du Pont and one with the

Laffin & Rand, or else it was two contracts. When we go back to Cincinnati, Mr. O. E. Peters, that is Mr. Peters of the King Powder Company, discussed the question of how we would divide up these equities. I had an equity of the trade of a customer that he had sold the most to and he would have an equity in my trade and that would be furnishing a customer with two kinds of powder. Our discussion down there with the coal companies developed the fact that a company would like—a coal company would like one brand of powder. Mr. Peters and I agreed to exchange our equities; I would give up my equity in the Lick Branch trade and he would give up his equity in the Algoona trade. We split the customers up and each received definitely Hazard or definitely du Pont or definitely King, and they remained that way and that was the agreement in Cincinnati.

Q. Very good. Well, all of that situation does not answer what I asked you. I asked you if the association had definitely allotted particular customers to you and other particular customers in the King Company. A. Well, they gave—

Q. Did they or didn't they? A. They had not in just that way in the association—they gave us the privilege to contract Hazard, du Pont and King, and to contract the Valley.

Q. Well, you testified the other day, that is the same trade that you mentioned two or three times having visited with Mr. French in '99 or 1902, Mr. Waddell, and you stated that you divided the territory between the Hazard and the du Pont Companies, the associates, and after the mix-up—you said that was one of the rules of the Association, that was the guide and you said that to indicate your knowledge of the contract system that you mentioned that obtained in the Pocahontas field.

That was in the year 1897. So you didn't mean by that, that the association itself had divided up the trade there, did you, Mr. Waddell? They left it to you and the King Company to come down there and see what you could do on it. A. No, that is not the way I put it, they gave the right, as they did in all their minutes, to one company if one company had a right to contract; where two companies were in a field they gave a right to the two companies, or if there were three companies, to the three companies to contract, and they authorized the Hazard and the du Pont and the King Company to contract the trade in the Northwestern district, and they left it to the judgment of the different companies.

4148

Q. As a matter of fact, you were down there in the summer of 1897 and met the members of the Boards of Directors of all these concerns, didn't you? A. Yes.

Q. And they talked to you, these men there, they inquired of you and talked over the general situation there? A. Yes.

Q. The discussion with them was whether it would be better for them to build a mill or make a contract for a certain period with your company? A. I don't remember about the mill; but I do remember that we talked over. This came up perhaps in the argument that I made.

4149

Q. My question was whether you remember talking over the building of a mill? A. No, I don't recall the building of a mill, it may have been suggested.

Q. Do you remember Philip Goodwill, do you remember him? A. Yes, he was president of the Goodwill Coal & Coke Company.

Q. One of the concerns in that valley? A. Yes, sir.

4150

R. S. Waddell—Cross

Q. Don't you remember writing this letter in April, 1897, and enclosing it in a letter from him (handing paper to witness)? A. That is my signature, I may have done so.

Mr. Button: Will you mark that, please?
(Same received in evidence and marked Defendants' Exhibits A-195 and A-196.)

4151 Q. And this is one of yours in April, 1897, upon the same matter (handing paper to witness)? A. That is my signature.

(Same received in evidence and marked Defendants' Exhibit A-197.)

Mr. Button: This Exhibit No. A-195:

"Cincinnati, April 10/97.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

4152

Dear Sirs:

Herewith I hand you copy of letter received from Philip Goodwill, Mgr., G. C. & C. Co.

The Mr. Tierney to whom he refers is J. J. Tierney of Pocahontas. When the Norfolk & Western R. R. failed and the coal company was broken, the operators in the Bramwell District selected J. J. Tierney as a referee or arbitrator of all differences that might arise between the Companies. His decision is final and he is the natural custodian of all information the operators in that district will tell of their affairs.

Mr. Rood is now in that vicinity and I have asked him to ascertain what Companies are paying expenses of unloading and making this in the nature of a rebate on powder. It may be we can get some information as to the methods of our competitors through Mr. Tierney. So long as coal operators buy powder at \$1.30 per keg and sell it to their miners at \$2.50 per keg in cash or labor, they have very little to complain about. I have written Mr. Goodwill as per enclosed copy, which I hope may meet your approval. If anything further should develop I will write you.

4154

Truly yours,

R. S. Waddell, Agt."

Now, Mr. Goodwill's letter to you was April 7th and it says '89.' I guess that is a misprint for '97'.

"Goodwill, W. Va., April 7/89.

4155

R. S. Waddell, Esq., Agt.,
The Hazard Powder Co.
Cincinnati, O.

Dear Sir:

There is not an operator in the Flat Top Field but who is strongly of the opinion that the present price of Powder is entirely too high, when compared with the exceedingly low price of coal and coke. In fact, so general is the opinion throughout the field, that there are already rumors to the effect of the operators concentrating their purchases to

R. S. Waddell—Cross

one good standard company. I think the idea is to purchase the powder through Mr. J. J. Tierney, Prest. of the Pocahontas Co. He no doubt will represent the above facts to one or two standard companies and the one with whom the best arrangement can be made will doubtless secure the trade. If something of this kind cannot be effected, the operators will no doubt erect a mill of their own at some central point in the field. Something of this kind will have to be done unless the Powder Combination will agree to deliver powder here say \$1.00 per keg, but when some of you are asking \$1.30 and \$1.35 (for there are two prices being quoted) we feel at the present low prices of coal and coke it is entirely too much. I have also heard that some Powder Cos., while they bill the powder at Combination price, there is a private understanding or agreement upon a certain rebate in the way of bearing part of the expense for unloading &c., so that if this be true, some of the parties to the Combination are breaking faith with the rest of you.

I think if you are Mr. Rood is contemplating a trip to the field, it would be well to see Mr. Tierney.

I give you the above facts for what they are worth, and would suggest that it would be well for you to be on the *alert*.

Truly yours,

Signed—Philip Goodwill, Gen. Mgr."

Q. Now, don't you recollect that that was the

origin of these contracts, this suggestion of Mr. Goodwill's, in April, 1897? A. I don't know that it was the origin of them; it may have been. I don't know what the origin was.

Q. So that was at a period prior to Mr. Rood's resignation, wasn't it? A. What is the date of that letter?

Q. April 7th. A. April 7th?

Q. 1897? A. Yes.

Mr. Button: Your answer to it is April 10th, 1897:

"Mr. Phillip Goodwill, Gen. Mgr.,
Goodwill, W. Va.

Dear Sir:

Your favor 7th inst., received.

No doubt the very low prices which ruled on powder during the past year have created the impression among men who do not understand the cost and risks of powder manufacture, that the present price is excessive. If the cost of raw material and the labor which enters in to a keg of powder were the only items of expense, there might be some foundation for this impression. The danger and expense of explosions, the cost of freight, handling and storage, the general expense of manufacture, the large capital required, and the long time intervening from the purchase of raw materials until cash returns for the goods are received, are sufficient to make the present price inadequate for a profitable business. The fact that Powder companies employing a capital of nearing a half million dollars wrecked their business and sacrificed their

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R. S. Waddell—Cross

mills, ought to be a suggestion of what can be accomplished by selling powder at \$1.00 per keg.

The rate of freight on powder to Norfolk & Western district is about 25 cts. per keg and nothing could be saved on the raw material when the other items of manufacture are considered.

4163

The Phoenix mills at Kenova withdrew from your market when powder reached 95 cts. per keg because they could not stand the losses. Others withdrew at \$1.00. Our companies sunk hundreds of dollars in defending their trade and selling your operators at uniform prices with other districts. We supplied you powder for months delivered at Bramwell for less money than the raw materials cost us at the mills. Sacrificing freight and many other expenses. Now when prices are made uniform and you are on a fair basis with other districts and the powder manufacturers are endeavoring to get cost for their product, dissatisfaction arises. They know very well that any one who, understands the powder business would not invest a dollar in a mill at present prices. I do not believe that powder can be made and delivered to you at \$1.30 per keg and net the manufacturer 10% profit considering the exigencies of the business for a term of three years. However, if it should be the desire of the coal operators in your territory to solicit a lower price on Blasting powder I will be pleased to submit a request of this kind to our Principals, who I am sure will give any reasonable request fair consideration. I would suggest

4164

R. S. Waddell—Cross

4165

however, that no mention be made of the building of a mill.

Permit me to suggest that the Powder Companies would be very willing to exchange profits on powder with the coal operators. I believe you are purchasing powder say at the extreme price of \$1.30 per keg and selling it at \$2.50 per keg. Your powder is delivered at your mines and most of it is sold before the Powder Companies are paid for it. It nets say \$1.25 per keg profit. If this be correct I venture the assertion that you make more than four times as much profit as do the manufacturers who take all the risks in the business. After a powder plant is wiped out by explosions two or three times, a number of lines are paid for, the business from the inside does not have the same glowing appearance that it has to an outsider.

4166

I thank you for suggesting that we confer with Mr. Tierney and I will ask our Mr. Rood to call on him. Anything we can do to aid the operators in the N. & W. district in getting uniform prices and the lowest rate that the manufacturers can afford to make in the district, it will be a pleasure to respond.

4167

Truly yours,

R. S. Waddell, Agt."

Exhibit A-197 is to the du Pont Co., five days later, April 15, 1897:

4168

R. S. Waddell—Cross

"Cincinnati, April 15/97.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

4169

Mr. Rood returns this morning from the Pocahontas district and reports that nearly all of the operators associated with the Coal Pool expected Mr. Tierney to obtain some concession in the price of powder. About one-half of the operators are independent of the Coal Pool and do not hold it in high esteem. The Coal Pool members use about 26,000 kegs of powder per year, while the outsiders use from 25,000 to 30,000 kegs probably a little more than the Coal Pool. Mr. Tierney did not put the subject in the shape of a threat of building a powder mill. He had my letter, and about the only criticism he could make was that they had reduced the retail price of powder from \$2.50 per keg to \$2.00 and would now only make 70c per keg instead of \$1.20, as I had stated in my letter.

4170

Mr. Rood stated that Kings and Phoenix had gone through the valley, and withdrawn from that market when powder reached \$1.00 per keg, and they did not return to get any business or take care of the operators, until a few weeks before the advance in prices when King entered the district to recover lost ground, preparatory to getting the advance price.

Mr. Tierney was seeking charity, rather than assailing the Powder companies. His

argument now is the low price of coal and the difficulty they have in getting to market. I furnished Mr. Rood some arguments before he left here, and which he gave to them. The principal ones were regarding the retail price of powder, if the operators should build a mill and become competitors; the Powder manufacturers of course would have to deal with outside stores and the retail price to miners would go down to a very small margin, thus destroying all of the present profits. 4172

The second point was that the FFF grain alone was used in the Pocahontas district. A mill cannot make one grain alone, and the same freight rate that shuts us out of the valley at less than the present price, would shut their mill out of the foreign trade for the coarser grains of powder. If they were compelled to work over the grain of powder that could not be broken to suit their coal, their powder would cost them more than we are now asking for ours. 4173

I think we have 'taken the wind out of their sails' on this question. There is, however, one very bad feature on which I write you a separate letter, thinking you might have use for it apart from the subject herein discussed.

Yours truly,

'H'

R. S. Waddell, Agt."

Q. Don't you recall that subsequently you made your trip up there and threshed the whole matter out with the Board of Directors in open meeting there, Mr. Waddell, in response to these sugges-

4174

R. S. Waddell—Cross

tions that have been made by, first by Mr. Goodwill and then by Mr. Rood, whom you sent up there? A. I got reports from all the sources I could get information, and I went up in that summer.

4175

Q. A simple and ordinary business proposition, discussing with that Board of Directors whether you would make your price such as to satisfy them or not, was not that all there was to it? A. No, I had specific directions from the Hazard and duPont Companies, specific orders to go with Joe French, who was supposed to be a strong competitor of ours, and that we had been authorized to contract the valley, my recollection is, at \$1.30, less a rebate of 15 cents a keg, provided we could get them all to sign, and that is what we did. I was not there to thrash out and fix prices, I had authority—

4176

Q. Did you write this report of that trip on July 14, 1897, from the Bluestone Inn at Bramwell, West Virginia (handing paper to witness)? A. July 14, 1897, that sounds about right; I suppose that is my letter. We met in Tierney's office, I know that.

Q. And they were there, weren't they? A. Representatives of all the companies came in.

Mr. Button: Will you mark this, please?
(Same received in evidence and marked Defendants' Exhibit A-198.)

Mr. Button: This letter is dated July 14, 1897, and is to the du Pont Company:

"Dear Sirs: It required a full day yesterday to reach an agreement with the Directors of the Pocahontas Company and to prevent a long series of arguments being added to our contract.

They had plans and estimates on a pow-

der mill in the office and some of the members thought they were wasting their opportunities to build a mill and were selling out too cheaply. One of the Directors said 15 cts. was not enough as he is now offered an outside powder of standard make at \$1.15.

I questioned the fact that he could get the powder and he replied "I have the \$60. paid me by the man as a rebate and he has my promise that I will take the car of powder and must take it. In signing the contract he excepted one car of 400 kegs. It was a hard matter to get him to assent to the contract and to sign it. We had to recognize the importance of the Pocahontas company by making a contract with them in which we agreed to make contracts with the individual companies. I tried to break the force of this by drawing a weak instrument, but they added to this paper.

4178

I think it will make weight in our favor.

It required nearly a whole day to shape this and we only executed five individual contracts.

4179

Tomorrow we go to Elkhorn, Ennis, Maybury and South Fork. The next day to Northport. Will be here until Saturday or Sunday.

Address Bluestone Inn, Bramwell, West Va.

Will send one copy of the agreement tomorrow. The other three copies will follow later—one each for du Pont, Hazard, King and Pocahontas Company.

Truly yours, R. S. Waddell, Agt."

4180

R. S. Waddell—Cross

Q. Now, that was a perfectly open discussion, there, wasn't it? They were prepared to take either choice they saw fit, weren't they, Mr. Waddell? A. No; oh, no. We had the contracts sent to me, printed from the East, printed forms, and I filled them in at \$1.30 less 15 cents; that is all the price I had; therefore there was nothing to discuss, the question was of getting them to sign.

4181

Q. You didn't understand me: They were at liberty, at perfect liberty to go on with either suggestion, to build a mill there or sign these contracts, weren't they? A. Certainly, they put all the pressure on us that they could get, they wanted to lower the price, that is the idea.

Q. Then are you sure you did not make a contract in 1899? A. Oh, I made a good many propositions, I was there, I think, I called on all of the trade of the Cincinnati office at least once a year and probably four or five times a year.

4182

Q. Well, now, are not you mistaken in saying you had a five-year contract, didn't it simply run to 1899 (handing paper to witness)? A. I thought it was a five-year contract.

Q. Is that your letter (indicating)? A. This is 1899—June 22, 1899. Yes, my recollection was, it was a five-year contract, but I was there several times.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibit A-199.)

Q. So, as a matter of fact, you renewed this contract in 1899, as you now recollect? A. I don't recollect—I only recollect being there once with Joe French and once with Mr. Pickard. There is a possibility that I may have been there twice with French.

Mr. Button: Well, possibly, I will read part of this without reading it all.

Mr. Abbott: Better read it all.

A. (Interrupting) Read it all.

Mr. Button: All right, this is June 22, 1899. "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del. Dear Sirs: Mr. French and this writer held a conference with the directors of the Pocahontas Coal Company at Bramwell, West Va., at 9.30 a. m. on 20th inst., and exchanged views on the powder question.

4184

We submitted our figures on freight; the fact that Mr. Justus Collins, a part owner in the Indiana Powder Co., declined to use his own powder and insisted on getting Hazard at \$1.15 net; we showed that the quality of our goods is far superior to the powder quoted them from Pennsylvania. We submitted a statement of freight rates showing the low net cost at the mills; argued the question in the best way we knew how and stood for a renewal of the contract at \$1.15.

4185

The Board went into executive session and we retired to the hotel. At 11:30 they sent for us and we had another round for nearly an hour, when we all adjourned for lunch. At two o'clock we resumed hostilities. When we found definitely that the contract could not be renewed at \$1.15 I made a proposition of \$1.12½ net for one year. This was promptly and firmly declined. Then Mr. Tierney stated that the Board were not fully united on the ques-

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R. S. Waddell—Cross

tion, but a majority had considered it carefully and they would make us an offer of \$1.10 net subject to 2% discount for a contract running three years. Mr. French and I conferred and accepted the proposition. There were some conditions imposed. The Board handled Mr. French pretty roughly in regard to his sales to Indian Ridge and others.

4187

They inserted a clause in the new contract specifying definitely what companies should be tendered the contract and that if either of the Powder companies, (and they referred particularly to King) should sell or rebate to others in that district who did not take the quantity of powder covered by the Pocahontas contract, such powder company would be released from their contract with the Pocahontas Company, and the others involved should take up the trade. Mr. French begged to have Indian Ridge accepted and the Board were unanimous in deciding that he should notify Indian Ridge that the price should be \$1.30 per keg and if he varied it, the contract with the King Company was ended.

4188

I herewith enclose to Wilmington to be forwarded to New York four copies of the contract which now bear the signature of the Pocahontas Company and the King Powder Company. Please have these executed in the same manner as the old contract, copy of which you have,—forwarding same to me when completed.

Mr. French was thoroughly convinced that we could not contract at \$1.15 and was not certain that we could make a contract

at any price. I am very hopeful of shutting out Shamokin, but there are four companies whose owners are stockholders in the Shamokin Powder Company. They may stick to Shamokin Powder although we will try to win them on this new deal.

You will note that the Empire Coal Company is omitted from the list of companies with whom we may contract, and the Browning mines have been included. We lose Empire for du Pont and gain Browning for Hazard. 4190

During 1898 the Pocahontas Coal Company field was furnished with the following powder:

Hazard and du Pont...	23040 kegs
King	26540

Excess of 3500 for King

This was due to our loss of Shamokin and Elkhorn Companies and for a portion of the time, Greenbrier and Louisville; the two latter being Justus Collins' mines. We also lost two carloads on account of delay in shipment. The orders were cancelled and they took the powder from King. I think we got our full percentage of the trade when we consider that Indiana Ridge used 1600 kegs and should not have been included in the deal for Kings. 4191

I hope this will all prove satisfactory to you.

Very truly yours,

R. S. Waddell, Agt.

H. Enclosures."

Q. Well, then, on that date the coal companies were rather dictating to the King Company what prices they should take and some other concern, weren't they? A. Yes, Indiana was in there then.

Q. And it is also true in this connection then in 1899 that you had some discussion as to prices there, didn't you? A. They had given me a rate; if you look at the minutes you will find it somewhere; I didn't make any prices.

4193

Q. You had a conference. A. We were authorized to make \$1.15 if we could, and if we couldn't to come down to \$1.10; I would never have made it otherwise. The contracts had to be signed by the principals.

Q. Certainly. A. I could not sign a contract.

Q. Well, without referring to this correspondence, do you not recollect, Mr. Waddell, that the Pocahontas situation did not have its origin in this situation which you determinate a contract system? A. I know definitely, it did.

4194

Q. Is that system in vogue in April, 1897? A. No, the contracts were not made in April, 1897.

Q. I understand that. But was the contract system in vogue in April, 1897? A. No, no, there was a committee appointed in 1897 to get up the contract system.

Q. And you know well enough, that these very contracts would have been made whether they had ever had a contract system or not, don't you, Mr. Waddell, on account of the pressure that was being brought to bear by that Pocahontas Company? A. No, I don't know that they would have been made; I don't know what would have been done; I know that we were not contracting generally. I never had any such contracts.

Q. Now, you stated the other day, Mr. Waddell, that when the Indiana Powder Company was sold

out, you had some conversations with Mr. Rood?

A. Yes—no, a good while afterwards, not immediately.

Q. Did he tell you how much he got? A. No.

Q. Didn't know anything about that? A. I never heard of it until afterwards, a good while afterwards; I think I got that information from the Hazard office in New York.

Q. When did you first learn that the company had been sold? A. I think I saw it in the paper about the time it was sold, or a few days afterwards. 4196

Q. When was that, in January, 1902? A. It was in January, 1902.

Q. Didn't you say in the Government case that you—didn't you testify as follows—I will read your testimony—at page 902: "I talked with Mr. Rood about the fight that they had made against the Indiana and when he was president of it, and the same kind of a fight they were making against me——" A. Against me, that must have been after 1903.

Q. "I went into the matter that he had sold out and did pretty well and that he was out of the business. Q. And did pretty well? A. Yes. Q. You were thoroughly conversant, of course, with that transaction? A. No, I wasn't. Q. In which he did pretty well? A. No, I wasn't. Q. You knew that he did pretty well? A. No; I didn't know it. I had heard remarks about it." When was it that you learned that he sold out and did well? A. It is apparent that you are relating what occurred after I built my mills in 1903. The conversation that I had with Rood about his having sold out was some time after the sale was made. I first got the figures according to my recollection now of what was paid for Indiana and Northwestern after 4197

4198

R. S. Waddell—Cross

I went to Wilmington in 1902; and I got those figures from an employee of the Hazard Powder Company.

Q. Well, you knew about it before you testified here, didn't you, on this occasion, you have known of it all the time you have been on the stand, haven't you? A. I know what the rumors were then, but I could not tell you today what price was paid for it.

4199

Q. You could tell us that he did pretty well, couldn't you? A. That is what he said he did, pretty well.

Q. Well, you knew it, didn't you? A. I certainly knew he was doing well to make his powder at 80 cents and have a contract to buy it from the stockholders at \$1.10, with no freight charges, that is always paying business, that pays you a profit of 30 cents and you could not lose money on that proposition.

4200

Q. Who was Mr. McBlair? A. He was the general agent of the Hazard Powder Company in St. Louis.

Q. Did you know him? A. Yes; right well.

Q. How long had he been general agent in St. Louis? A. I don't know how long.

Q. It was for a period of some years before 1902, wasn't it? A. Yes, sir.

Q. He had been selling the du Pont and Hazard powders, hadn't he? A. No; I think he was not agent for the du Pont for a good many years.

Q. Meacham was agent for the du Pont. McBlair was the Hazard Powder Company agent, is that right? A. Yes; I don't know when he got the Hazard agency.

Q. Mr. Eugene du Pont died about this time, didn't he? A. The latter part of February, 1902, I think.

Q. Mr. Colvin was getting pretty old at that time, was he not? A. No; he was about 58.

Q. About that time you learned that Mr. T. C. du Pont and Mr. Pierre S. du Pont had come into the business, didn't you—about March, 1902? A. Yes, sir.

Q. You also knew Mr. Rice of Chicago, didn't you? A. Yes, sir; I knew Mr. Rice.

Q. Then about that time you came to the conclusion that it was time for you to go into the powder business for yourself, about March or April, 1902, didn't you? A. I had no thought of it at that time. 4202

Q. It never entered into your head at that time, did it? A. No; I was under contract for five years with the du Pont and Hazard Companies.

Q. Do you remember going to this Great American Handicap Meeting in Kansas City, in April, 1902? A. No, sir. There was no such meeting held at that time.

Q. When was it held? A. In 1901.

Q. You are sure about that? A. Yes; I am quite sure. 4203

Q. When did you locate that date? A. I have not located it, but I am quite sure I didn't go to the Grand American Handicap after Mr. Eugene du Pont's death.

Q. In the Government suit, you said that you did not know whether it was in 1901 or 1902, didn't you? A. Yes; but after I got off the stand I thought it over.

Q. That is what I am inquiring about. How and when did you locate the date since that time? A. I knew that I did not go to the Grand American Handicap after Eugene du Pont's death.

Q. Well, how did you know that? A. Well, young Eugene came to Cincinnati and went with me in a party to the Grand American, and things

4204

R. S. Waddell—Cross

were very much unsettled after Eugene du Pont's death. I know it was a year prior, it must have been.

Q. Then when was it, in April, 1901? A. It was prior to 1902, I should say about April, 1901.

Q. And at that time you were—April what? A. April, 1901.

Q. And at that time you knew perfectly well that a good many of these mills had been built to sell out to the du Pont Company, didn't you? A. 4205 No; I never knew a mill built to sell out to the company.

Q. Well, in April, 1901, had you determined to go into the powder business yourself? A. No; I say I was under contract signed the 1st of January, 1900, for five years, expiring the 1st of January, 1905.

Q. And that prevented you having any such thought, did it? A. Well, I had no thought of going in, I would not have left Eugene du Pont under any conditions. I admired the man very much and do yet. 4206

Q. Well, do you recall seeing Mr. E. S. Rice at this meeting of the American Handicap whenever it was? A. Rice had a party there from Chicago.

Q. Did you see him? A. Why, oh, yes; I saw him.

Q. Talked with him? A. Oh, occasionally I spoke to him; I did not have any communication with Rice very much.

Q. Didn't you talk with him at that time about building a powder mill? A. No.

Q. No conversation with him on that subject whatsoever? A. None whatever. Rice was the last man on earth I would talk with on any business proposition; he and I had been enemies for years.

Q. So you are very sure you said nothing to him about it? A. Yes.

Q. What were you down there for Mr. Waddell?
A. At the Grand American?

Q. Yes. A. I took two carloads of expert sportsmen there to contest for prizes during the week of shooting. I attended all tournaments, Grand Americans; I participated in the shoot.

Q. Don't you recollect asking Mr. Rice to wait for you one night when you were going back from those grounds to the hotel? A. No.

Q. Because you wanted to talk to him? A. Going back from the hotel? 4208

Q. That you wanted to talk to him on the way back from the grounds to where you were stopping? A. No.

Q. Didn't you discuss the powder business with him? A. Oh, no; not with Rice.

Q. Didn't you complain to him about the situation at Wilmington since T. C. and P. S. du Pont had come into the business? A. They did not come in until a year after that.

Q. Then you did not? A. Certainly not.

Q. And that you were not permitted to do things that you wanted to do in Cincinnati, didn't you complain to him about that? A. No, no; I should never have consulted a thing like that with Mr. Rice. 4209

Q. And finally did not you propose to Mr. Rice, that you go and he go in together and get Mr. McBlair of St. Louis and build a powder mill? A. No.

Q. You did not at that time? A. No; I knew McBlair hated Rice as much as I did; it would have been the last combination in the world.

Q. But did not Mr. Rice say to you that he did not care to go into that business, that he had had all the experience in the powder business that he cared for? A. No.

4210

R. S. Waddell—Cross

Q. And had been as near its manufacture as he cared to be, didn't Mr. Rice say that to you? A. No; he is still in it.

Q. And then did not you discuss the question of what kind of powder you wanted to make and stated at that time it was blasting powder? A. No.

4211

Q. And is not it true that Mr. Rice said to you that he objected to the manufacture of powder or going into it, didn't say that? A. No discussion at all with Rice.

Q. And didn't you reply to him that it would be unnecessary to manufacture any powder, that you would manufacture prices? A. No.

Q. Didn't say that to Mr. Rice? A. No.

Q. And that you could shortly sell out to the du Pont Company at a large advance? A. No; no such discussion.

4212

Q. And didn't you discuss with him how well Mr. Rood had done by following a similar course? A. And that Rood had sold out? No; he didn't sell out for a year after that. I didn't have any talk with Rice.

Q. That depends upon whether this meet was in April, 1901, as you say or whether it was in April, 1902, doesn't it? If you should happen to make a mistake on that subject, then it would be after the Indiana sold out? A. I certainly would not talk—I had no conversation with Rice.

Q. Had no talk with Mr. Rice of that sort whatever? A. Not in any year under any conditions.

Q. You have got a copy of that five year contract made in 1900, have you? A. I think I have; I know that it was cancelled during 1902.

Q. That was in November, when you tendered your resignation, wasn't it? A. No; Mr. du Pont came in early in 1902 and said that the Hazard

and du Pont Companies desired to cancel their contract. I said that was all right, and then the contract was cancelled by mutual consent. I think I have a copy of it.

Q. Did you write this letter? A. That is my signature.

(Letter referred to and dated Cincinnati, March 19, 1902, is marked Defendant's Exhibit A-200, and read to the jury as follows):

The Hazard Powder Co.,
New York.

4214

Dear Sirs:—

Until the present there has been no opportunity to write you as promised. I presented my case to Mr. T. C. du Pont, Prest., in the kindest way it could be stated and have agreed to hear his comments in two or three weeks.

Let me briefly group a few facts under two headings, that indicate my views:

One Side of the Case:

4215

Chattanooga Mills were purchased, Mr. Connable placed in control under direction of Mr. Haskell. They were given a large share of our trade.

Birmingham Mills purchased and placed under management of a favorite of Mr. Haskell imported from New York and was awarded nearly all our trade in Birmingham district—250 kegs per day,—say 75,000 kegs per year.

Kings product purchased and its distribution placed under management of another favorite of Mr. Haskell imported from Maine, located within a minute of our office, and awarded thousands of kegs of our trade per year.

4216

R. S. Waddell—Cross

Indiana Powder Mills purchased and placed under management of.....(?) Directed by(?) Official advices have not reached me, but if rumors are confirmed, this harmonizes with the preceding and closes the chapter.

The Other Side:

- 4217 1st. We occupied this territory years prior to most of the above opposition and during the competition in original hands, by hard work we built up a business, resisting L. & R. and all other companies and it was chiefly by our efforts that the purchases of the above interests were made possible.
- 2d. We hold an acquaintance with the trade, formed by twenty years competition and constant study of trade relations, while Mr. Haskell's representatives, chosen as our rivals were total strangers.
- 4213 3d. We had offices; an organization as a basis on which to build; and the willingness and ability to work, as a means of advancement in a business to which I am devoting the best years of my life.
- 4th. Our fidelity, industry and business character have not been impeached.
- 5th. Much more might be said on both sides.

Queries:

A hundred questions suggest themselves. I note only a few.

- (a)—If it were the object to market the product of Birmingham, Kings and Indiana, can strangers do it better than a man in the district who won and held the business over *all* competitors for many years; or would strangers cause less loss of trade to com-

panies already in possession of the business?—or could it be done cheaper by new, independent and untried force with no organization?

- (b)—If the object were to antagonize and force a division of du Pont and Hazard trade and the destruction of the Cincinnati Branch would I be chosen?
- (c)—Has there been no unfair, unjust and secret discrimination against me in all this management and its direction? 4220
- (d)—Would you expect a man of fair intelligence and a sense of just dealing, to permanently submit to such treatment and what it implies?

I am going to break into the powder business and kindred lines. How, when or where, need not be discussed. It would appear from late object lessons that the "Lord helps the man who helps himself," and by the co-operation of friends, who desire it, I am assuredly competent to present an organization and management that will command respect. 4221

I have tried to be fair and reasonable with old friends. In every aspect by grievance seems well founded.

Very truly yours,

R. S. Waddell, Agt.

Q. That was within two weeks, about, after Mr. T. C. and Mr. P. S. du Pont came into this business? A. It was a while after; I don't know just when they came in.

Q. Then it is true, is it not, that in March, 1902, you had it in mind to go into the powder business? A. No; not definitely. I was trying to get some measure of justice from the Hazard and du Pont Companies.

4222

R. S. Waddell—Cross

Mr. Button: I move to strike that out.

Q. My question was whether that was not your purpose at that time to go into the powder business? A. No; I was under contract at that time.

Q. I see your language is "I am going to break into the powder business and kindred lines. How, when or where need not be discussed." A. That is right.

4223

Q. That is not true then, your statement which you wrote to your principals? A. Yes, it was true.

Q. And they had been in the business two weeks and you put that up to them, didn't you? A. The Hazard Powder Company was in business long before I went with them.

Q. Very good. But you knew that those two men had been in there about two weeks when you put this proposition up to them, didn't you know that? A. No, I don't know, I didn't know who was in.

4224

Q. Didn't you know when Mr. T. C. du Pont and Mrs. P. S. du Pont went into the business? A. No; I knew in a general way that they had been negotiating to come into it; but I didn't know when they went in.

Q. You didn't? A. Eugene du Pont died the last days of January and I never heard anything more about it.

Q. Therefore this statement was untrue in your letter, "I presented my case to Mr. T. C. du Pont, President, in the kindest way it could be stated and have agreed to hear his comments and proposals in two or three weeks?" What was he president of? A. President of the company; I was there at Wilmington about two or three days before that.

Q. Just a minute ago you said you didn't know at this date that Mr. P. S. du Pont and Mr. T. C. du Pont was in that business, didn't you? A. No, you misunderstood me; I did not know what date they took charge there.

Q. You knew that they were in charge of this business, didn't you? A. About three or four days before I went to Mr. T. C.

Q. Within two or three days after you learned they had taken this business, you put this proposition up to them, then? A. It had been put up to them long before that.

Q. It was a threat by you to go and build a mill, wasn't it? A. No, it was not.

Q. It was a statement made by you that you would go into the powder business because you discovered "The Lord helps the man who helps himself," did you not say that? A. They had taken all my trade away from me throughout that country there and left— 4226

Q. What trade had they taken—your trade? A. The trade of the Cincinnati office and they had taken and given it to the Laffin & Rand agent when they had not been able to keep it before and I had all of the trade and then when Birmingham trade was taken away from me and turned over to the Laffin & Rand—they had taken away all of my trade. 4227

Q. Again will you state whether you had it in mind in March, 1902, whether you had it in mind to go into the powder business? A. No, sir.

Q. At the time along then when you went to Wilmington? A. No; I was trying to force a settlement, and adjustment and get them to give me some share in the business that they had taken away from me. They had taken the trade that I had always had and had given it to others who had not earned it and I was seeking to secure some slight recognition at their hands.

Q. Then it was not true that you intended to go into business? A. No.

Q. Then it was not true that you were going to "break into the powder business and kindred lines?"

A. No, sir. You misinterpret my meaning entirely there.

Q. Did you think there was any chance of their misunderstanding it at that time? A. Yes; they called me on to Wilmington and made me the general salesman of the United States to adjust matters with me.

4229 Q. And to prevent you from going out into the powder business? A. No; to treat me fairly; they had taken all my trade away from me by these deals.

Q. Who were the friends who were at this date willing to co-operate with you in building a powder mill? A. I didn't have any one particular in mind; I was not going to build a powder mill—that was not the question. I was going to break into the business in some other way, get into it so that I could do business.

4230 Q. You say here, "and by the co-operation of friends who desire it, I am assuredly competent to present an organization and management that will command respect." Who were the friends? A. I don't know.

Q. How did you know that you had any friends who desired you to go into the powder business? A. Well, I had a general idea that I had a few friends left out of several thousand that I had cultivated; and I had the general opinion that there was a few that had faith in my ability.

Q. Then you say, "By the co-operation of friends who desire it, I am assuredly competent to present an organization and management that will command respect." When you said that you had not consulted those friends in regard to the matter? A. Oh, no, no; it was a discussion between myself and my principal.

Q. And I suppose that you state that this statement in this letter, then, is entirely true? A. Yes, sure.

Q. Then if this meet, the American Handicap happened to be in April, 1902, you did have it in mind within two weeks before that time, the going into the powder business, didn't you, Mr. Waddell?

A. No, not that at all, no thought of it; I was under a written contract with my company.

Q. But do you still say when you wrote this letter you had no thought of going into the powder business? A. No thought of building a powder mill at all—never occurred to my mind.

Q. What did you mean by the language, "I am going to break into the powder business and kindred lines"? A. I don't know what the thought was in my mind when I wrote it; I wanted to get a better action than I did in Cincinnati; they had broken my business down and taken it away and given it to people that could not do it themselves. I wanted to get a better deal than I did.

Q. You knew that Mr. T. C. du Pont and P. S. du Pont knew particularly about this at that time, didn't you? A. I didn't know what they knew at all.

Q. You went to Wilmington within a few weeks after the date of the writing of this letter? A. Mr. du Pont wrote me as he said he would.

Q. Did you go to Wilmington within a few weeks of this date? A. Well, I don't know when it was; it was along in the spring of 1902 that I went to Wilmington; I don't know the date. That was March, was it?

Q. March 19, 1902? A. I think I was in Wilmington about May.

Q. As general sales agent? A. Yes, in name but not in fact.

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R. S. Waddell—Cross

Q. But you familiarized yourself during the succeeding months with all the contracts and relations of the du Pont Company with others, had you not?

A. No, no; I never did anything—I knew the contracts of the du Pont Company, of course; I had to know that, of course.

Q. You learned all about that during that period? A. Oh, no; I knew very much about it before I went there.

4235

Q. One of the things you did during that period was to assist Mr. Moxham in getting up a list of all the contracts with various consumers of powder, was it not? A. That was along in the fall; yes.

Q. Oh. When did you begin the work at his request? A. I think he came to me shortly after the purchase of the Lafin & Rand Powder Company, along in September perhaps and asked me to get him up some data. I didn't have it all there and I sent to Edward Green's office in New York to get it.

4236

Q. What you got up was these exhibits known as Moxham's exhibits and is the list of contracts that have been talked about here? A. The clerks in my office got the information and I assembled it.

Q. Under your direction? A. Yes.

Q. And you were perfectly familiar with it? A. Well, no; I can't say I was perfectly familiar with it; I saw the list and read it over and checked it over.

Q. Well, were you or were you not familiar with it? A. Well, that depends upon what you call "familiar." If you asked me to repeat them I could not do it.

Q. You knew how many contracts there were, didn't you? A. I knew there was several pages of them; I never counted them.

Q. You knew the date they were, didn't you? A. I knew most of them I think.

Q. You knew when they would expire, didn't you? A. No, I can't say that I did. I read the lists over as the stenographer brought them in.

Q. You knew how much powder was ordinarily consumed by each of those people, didn't you? A. I figured that up in that letter I wrote Pierre du Pont, and put it in there.

Q. And you knew when they would expire? A. No; I can't say that I did. They were on the list; but I don't know that I ever read that part of it.

4238

Q. Mr. Moxham consulted with you pretty freely about the making of that list and what recommendations he should make in regard to it did he not? A. Well, he asked me about the list, if I could prepare him a list of all the contracts of all the powder companies in the United States; and I told him we didn't have such data in the du Pont office; that the only place where all of the contracts were filed was in Ed Green's office. He got me entrance to Green's office and I got that there.

Q. My question was whether he consulted with you freely on the subject? A. No, I don't think he consulted with me.

4239

Q. Are you aware that as a result of that list Mr. Moxham took the position that the price of powder had not kept pace with the advance in the price of other commodities during the few preceding years? A. I didn't know it while the list was being prepared. I knew it after he sent me a copy of his sheet.

Q. That was the first time you knew the view that he held? A. Yes, I never saw his speech until after it was delivered.

Q. Didn't you yourself advise him on that matter, and recommend to him that the prices should be advanced? A. He wrote me a letter.

Q. Did you or didn't you? A. Well, yes, with

this explanation: He wrote me a letter asking—calling my attention to the schedule No. 6, I think it is, page 20 and so on, which was then separate from it, in which he had figured out, or the auditing department—

Q. Have you got the letter? A. No, you have got it.

4241

Q. What is the date of it? A. Well, I don't know the date; he wrote the same letter to Rice and to F. J. Waddell and Mac Blair and other agents, asking them what they thought of prices—

4242

Q. I am not interested Mr. Waddell just at the moment just as to what other agents advised him. I want to know whether or not you recommended to him to advocate an increase in the price of powder at that date? A. I recommended this: That the price of powder had been \$1.25 per keg and that the schedule that he had referred to showed that the net price in the central district with which I was most familiar was \$1.14 per keg and that I thought a fair and reasonable price would be \$1.25 per keg for the central district and that ten cents advance I would favor. He recommended ten cents advance, and if the finance committee would furnish the money to attend to outside competition, he would recommend that that be done. I didn't do that.

Q. Now, you have added the element that if the finance committee would furnish the money; you didn't mention that the other day when you talked about the finance committee did you? A. It is mentioned in Mr. Moxham's speech—I am simply quoting from the last clause of his speech.

Q. Did you testify as follows in the government suit, page 214 volume one: "Q. Between the meeting of October 11th or immediately prior thereto, and up to December 19th, what, if anything, did

you do under the direction of any of these officers, with reference to the collection of data? A. Mr. Moxham told me he had been appointed chairman of a committee to report to the adjourned meeting, regarding the state of trade, and he desired to consult me as to whether or not I would advise an advance in the price of blasting powder. I said, 'Yes, we have bought in the Indiana and other outside mills, and I feel an advance should be made to recover our investment.' I believed the price was low enough to stand an advance. He consulted the other general agents in the west and sent me copies of his letters to them asking practically the same question. They agreed to the advance and recommended it." A. Yes, from \$1.14 to \$1.25.

4244

Q. Well, it was this advance of ten cents a keg? A. Of ten cents a keg, yes.

Q. And that eventuated sometime during December, 1902, did it not? A. I think the annual general meeting was held on the first of October or the tenth of October and in between that adjourned meeting and the nineteenth of December, that the advance was made. Mr. Moxham asked me what my judgment would be and I said that I thought that \$1.25 was a fair price for powder and that is my judgment to-day.

4245

Q. Well, then, you knew in November, 1902, that there was a very good prospect of an advance in the price of powder did you not? A. No—well, I didn't know what the prospect was; I knew that December 19, 1902, the advance was made.

Q. Well, you had been working for some weeks prior thereto in getting up this data from Mr. Moxham and talking with him about it? A. Nothing but that list of contracts. I didn't talk with Mr. Moxham or discuss the question with him. He did his own thinking.

Q. Well, didn't you say at one time that you helped Mr. Moxham prepare this speech? A. Well, I prepared the data for it, but so far as the wording of his speech is concerned, I never prepared it.

Q. I know, but you helped him settle upon the ideas that were to be put into that speech, didn't you, Mr. Waddell? A. Those exhibits that went with it, upon which his speech was founded, I helped him prepare.

4247

Q. And you helped him formulate the arguments that he made in that speech, Mr. Waddell? A. No; I didn't.

Q. Didn't you discuss it with him at all? A. I don't think that I did. I may have mentioned it; he may have mentioned some of his arguments, but I didn't write his speech by any means.

Q. I didn't mean that you did. But didn't you consult with him very freely about the whole matter? A. I answered any question Mr. Moxham asked me and he frequently sent for me to come to his room. I didn't go of my own accord.

4248

Q. Undoubtedly; at any rate in the midst of this agitation for higher prices and on November 25, 1903, you sent in your resignation, did you not? A. Yes; but that wasn't what I assigned was the cause of my resignation by any means.

Q. I dare say, but you did send in your resignation on that date did you not? A. Yes; for several different causes.

Q. And then you had come to the conclusion that it was a good time for you to break into the powder business hadn't you? A. No; when I had thought of it several times I had come to the conclusion that I was about down and out and they came to me and they asked me to cancel my contract, which I thought was good up to the first of January, 1905. I didn't feel very pleasantly about it; I acquiesced in it as they requested it. I thought they were

going to push me out. I think so still; and as a preparatory move, and I considered it very seriously, and I thought I had reached that time in life where I ought to have a business of my own for myself and boys.

Q. As a preparation for putting you out of the powder business you think they brought you to Wilmington so that you could learn all about the internal affairs of their company for three or four months; do you think that was the first step? A. I didn't go to Wilmington to learn the business.

4250

Q. Do you think it was the first step they took to put you out of business; would you now say you believe their purpose was to put you out of the business? A. I don't say it was their purpose; I felt that it was not just the proper thing for them to come to an old and reliable man whom they were advancing and ask him to rescind a contract.

Q. What salary did you draw at Cincinnati immediately previous? A. \$9,000 a year.

Q. And what salary did you draw when they brought you to Wilmington? A. \$10,000.

4251

Q. And they made a contract then for how many years? A. Didn't make any contract at Wilmington.

Q. They made a contract with you for three years—\$10,000 the first year, \$11,000 the second and \$12,000 the third, didn't they? A. No contract at all.

Q. Passed letters on the subject? A. No letters.

Q. Passed letters on the subject did you? A. No.

Q. That was the arrangement, wasn't it? A. Mr. T. C. du Pont asked me about what I thought would be a fair salary. Well, I said, "I am beginning here new—new work to me; I have been to a con-

4252

R. S. Waddell—Cross

siderable expense in getting on here, breaking up my home which I had for eighteen years—

Q. I didn't ask you what he said, Mr. Waddell; I asked you if that was the arrangement? A. You asked me what the talk was. I am trying to tell you.

4253

Q. You needn't tell what the conversation was you had on the matter. A. It all ends into it; it is all part of it; he said, "I think you are entitled to some advance and how would \$10,000 do for the first year?" I said, "All right, now am I to carry this added load and other burdens that are coming on me through coming down here permanently?" He said, "no, I think you ought to have say for the first year, while getting started and organizing this department, \$10,000 and then say \$11,000 for the next year will be I think fair, and then say \$12,000 for the time that you might remain with us after that." It was indefinite, there was no—I got paid monthly; I had no contract at all.

4254

Q. Then the arrangement was for one year you were to get ten, the next eleven and the next twelve? A. If I remained, yes; and everything was alright and satisfactory. I presume they would have paid me.

Q. That was the agreement, wasn't it? A. Well, there was no agreement about it; there was no contract made; that was the rate of wages that they were going to pay me, were willing to pay me.

Q. You mean you started in without any agreement at all? A. Why, he said he would pay me \$10,000 a year and he did.

Q. Did you testify in New York, "I entered the service at Wilmington, Delaware, when they raised my salary to \$10,000 the first year, \$11,000 for the second and \$12,000 for the succeeding years.

I wasn't under contract at Wilmington except from month to month." A. That is so.

Q. Very good. That was the arrangement, wasn't it? A. That is the arrangement; that is what I am stating here.

Q. Then you did have some understanding that you were to stay there for some protracted period, didn't you? A. No, I didn't. From month to month I said the contract was.

Q. Very good; but you at least provided for three years? A. Yes, he told me that he would advance my wages if I remained there; he didn't know that I would leave.

4256

Q. Oh, of course not. Well, now Mr. Waddell, you had in mind at that time to build a powder mill, didn't you? November 25th, 1902, when you resigned? A. The day I resigned—

Q. Did you have it in mind; that is my question? A. The time I wrote that letter I had it in mind that I was going to build a powder mill.

Q. And you knew that these prices were pretty apt to be advanced, didn't you? A. No, I didn't.

4257

Q. And that was one of the things you were relying upon for your success, wasn't it, that this Association that you knew about would keep the prices up there? A. No.

Q. You didn't rely upon that at all? A. No; I just relied on my ability to build up a new business; that was all.

Q. You had observed for the last ten or twelve years, had you not that every time these powder companies got together and tried to adjust prices that new companies had sprung up had you not? A. When the prices were put up to a very high limit, they were.

Q. Well, up to the limits that we have discussed here within the last few days? A. And I had also

4258

R. S. Waddell—Cross

observed that when the new mills were built the prices went down, the fight came on.

Q. And that also these companies had some arrangement made with them after a few years; you had also observed that fact had you not? A. I had observed that they had wrecked the companies and bought them in, yes.

4259

Q. Wrecked them? Did you write this letter to Mr. Moxham, November 10, 1902, some two weeks before you resigned (handing letter to witness)? A. That is my signature.

(Letter received in evidence as A-201, and read to jury as follows):

"Wilmington, Del., Nov. 2, 1902.

Mr. A. J. Moxham,
President,
Office.

4260

Dear Sir:

In reply to yours this date, I can give you those who possibly might promote a Consumer's powder plant in the Cincinnati district in the event of an advance in price.

Sloss-Sheffield Steel & Iron Co., Birmingham, Alabama, consumes 40 M to 50 M kegs per year.

Tennessee Coal, Iron & R. R. Co., Birmingham, Alabama—Chattanooga Powder Company contract.

M. P. Davis, Charleston, W. Virginia, at various interests, consumes 20,000 kegs per year and influences 50 M kegs additional.

George Lewis, Mgr., Chesapeake Mining Co., consumes 10 M kegs per year, influences 25 M kegs per

year additional. Would combine with Davis for the mills in Kanawha and New Rivers, West Virginia.

Bramwell-Pocahontas Coal fields, on Norfolk and Western Railroads. It is difficult to say who would be the leading spirit of the Tierney Syndicate. I would judge that Mullen of the Shamokin Coal Company would influence this organization, as he is a heavy stockholder in the Shamokin Powder Company, Shamokin, Pa., which has made a success. The Tierney Syndicate consumes 75 M kegs per year.

4262

Usually it requires an organizing spirit to promote such enterprises and these have generally been furnished by powder manufacturers, who have in the past failed to recognize the importance of interesting their best men in the business with themselves.

Any good man who has a fair knowledge of the business, and some understanding with the trade, can get all the capital required, either by assembling smaller coal operators or from an independent source, to build half a dozen mills, if he so desires.

4263

This view of the question has been entirely overlooked.

Had there been a closer co-operation between manufacturers and their best men, and in lieu of increased salaries some effort been made to interest the men in making investments with their principals, there would have been fewer competitive plants.

The powder business has been conducted by close corporations, and they have produced a regular crop of competitors with mushroom mills for sale, and for which the close corporations have paid fabulous prices.

If you will permit me to suggest, I would say that suppressing dissatisfaction inside present powder

4264

R. S. Waddell—Cross

organizations and fortifying against future troubles of this kind will send fewer men abroad to organize belligerent forces.

It would surprise you to know the number of inquiries and offers that good powder salesmen receive during a year, to take the leadership of a competing organization. They have been in the past largely held by sentiment. This is no longer a magnet.

Truly yours,

4265

R. S. WADDELL,
Gen'l Sales Agent."

Q. Now, that was two weeks before you resigned, was it not, Mr. Waddell? A. That is my reply to Mr. Moxham's request.

Q. I will read his request if you want to detail it; is this it (indicating)? A. That is right; that was sent to all the agents, general agents in the country. I expressed my views and it is exactly what I think to-day.

4266

(Last-named paper received in evidence and marked Exhibit A-202.)

"Nov. 10, 1902.

Mr. R. S. Waddell;
Gen'l Sales Agent.

Dear Sir:

Will you kindly give me a list of such consumers in the Cincinnati territory who would be the most likely ones to start up a Consumer's powder plant if cause were given them to do so, e. g., if they objected to an advance in price. To the extent of your knowledge kindly give me the number, their names, the amount of powder they would likely consume

and such other information as would guide me in the premises."

Q. Now, then, were you referring to yourself as one of the men who should be taken into the business and given a share of it in this letter, Mr. Waddell? A. No, not particularly I didn't refer to any one; that was the general proposition.

Q. You had yourself in mind in making that suggestion? A. I had in thought Mr. Carnegie's method of interesting his head men in the business.

Q. Just answer the question Mr. Waddell did you have yourself in mind as one of these best men to whom a share of the business should be given at that date? A. Oh, no. 4268

Q. You didn't? A. I was discussing the general proposition.

Q. You were perfectly aware at that date of the fact that the manner in which the powder business had been conducted had been such as to produce a regular crop of competitors with mushroom mills for sale and for which the close corporations have paid fabulous prices; you were familiar with that, weren't you? A. I had in mind there the Kellogg mills. Kellogg was private secretary of the Lafin & Rand. He built the Phoenix plant. 4269

Q. The Phoenix mills? A. Yes.

Q. You mean that one mill was a regular crop of mushroom mills? A. They had three of them.

Q. Those were the regular crop, that is the regular crop of mushroom mills that you referred to? A. Well, take Rood, Rood was one of them.

Q. You wouldn't except Birmingham, would you, Mr. Waddell? A. I never was in the Birmingham mills; I don't know them.

Q. But you had them in mind, didn't you when you wrote this letter? A. No, that Birmingham mill was built by Green and Riley.

4270

R. S. Waddell—Cross

Q. They were powder men, weren't they? A. No, they weren't; they were merchant men—grocers.

Q. They had done the same thing before hadn't they? A. I think one of them perhaps had been interested.

Q. Well, was the Birmingham mill one of those you had in mind in making this comment? A. No, I don't think so; I think I had in mind Rood's mill. That was the most recent one and Kellogg's mill, I knew that.

4271

Q. And which ones had been bought out for fabulous prices after they were killed? A. Kellogg.

Q. Which others? A. I don't know.

Q. Rood? A. I don't know what Rood's price was; I may have known at that time; it was late in the fall of 1902; I think I did; that is, I knew the rumors of what he got.

Q. How long after this letter was written was it that you made a definite proposal to Mr. T. C. du Pont that he take you into his powder business? A. That I made a definite proposal to Mr. du Pont?

4272

Q. Yes. A. I never made a proposal to Mr. du Pont in my life.

Q. I see. A. He may have to me.

Q. At any rate, you did send in your resignation and then you had an interview with Mr. T. C. du Pont, did you not? A. He sent for me to come to his room and I went in, he asked me to remain with him.

Q. Wait a minute, I haven't asked you what he said. A. Yes.

Q. It has been so long since we heard your statement in regard to what was said there that I would like to read a page or two here—your direct examination, page 1819, reading: "Q. Now, when you tendered your resignation what, if anything transpired, what, if anything, was said to you by

any officer or representative of the interests which you had hitherto represented? A. Mr. T. C. du Pont asked me to come to his room when he received my resignation, and—— Q. Did you go?

A. I did. Q. What was the result of your visit to Mr. T. C. du Pont? A. The conversation between

us in which he said that—— Q. Then relate the

conversation. A. He said he regretted that I was going to leave them and asked me if I wouldn't consent to remain, that he thought possibly the differences between the departments could be adjusted, and I told him I thought not. He then made

4274

me a proposition. Q. What was that proposition?

A. It was oral; he said if I would drop the matter, remain where I was, that he expected to have the organization of the company complete in a short while and he would give me \$25,000 of the preferred stock which he expected to put on the market at seventy dollars a share and \$25,000 of the common. I asked him what the common was worth. He said nothing, until it will be issued, but it is a good thing to lay in the drawer of your desk and when we put it on the market it will go to par, we hope. I declined the offer and told him that I would prefer to go into business for myself and establish a business for myself and my sons and I thought it was the proper time to do it, too.

4275

Q. Now, what did he say in answer to that statement made by you? A. He asked me what kind of business I was going into. I told him I thought I would build a small mill. I thought I had been with the company long enough to earn that right and to have a little business of my own. He agreed with me; said he thought I had. He then made me another proposition—whether it was at that interview or one held a day or two afterwards I don't recall, but there was another verbal offer made by

4276

R. S. Waddell—Cross

him. Q. What was that proposition? A. He recommended that I go to New York City and establish a firm—R. S. Waddell & Company. The company would be the Powder Company—the du Ponts. We were to be brokers for the purchase of soda, importation of soda and all mill supplies, raw materials, not only for the du Pont interests but for others who were associated and to whom we could probably sell. Q. What did you say in answer to that proposition? A. I told Mr. du Pont

4277

that I knew nothing about the importation of soda; that I didn't want to learn a new business, at my time of life, and I didn't want to go to New York City and engage in the brokerage business and declined the offer. Q. What then, if anything, did you say to him concerning your plans or did he say to you? A. He asked me about what size mill I expected to put up; I told him one with a capacity not to exceed

4278

kegs per day, that I didn't expect to produce that quantity at the start, probably 400 to 600 per day, but later I wanted the plant to grow to a capacity of probably 1,200 kegs per day. He said, 'Well, just let the matter rest for the present, continue on in your duties, you have suggested in your resignation that you would be willing to remain over thirty days until we could instal your successor. Remain here a while and we will make you another proposition.' I did so." And then you went on to tell about these propositions to go into the powder business which were formulated in these written proposals? Now, then, as I understand it, there were three separate, distinct proposals made to you, one to pay you \$50,000 at part in stock, another that you go to New York into the brokerage business, and the third and last that they join you in the powder business; is that correct? A. Yes; there

were three or four of those joining propositions in the powder business.

Q. I know; and the joint powder enterprise took the form of several different kinds of proposals, that is what you mean? A. Yes.

Q. Well, now, then, when was this powder business proposal made, how long after your resignation? A. Why, I should think it was about the first or second week in January.

Q. As long after it as that? A. Yes.

Q. Six weeks? A. I resigned the last of November and I stayed over the whole of December. Of course the holidays came on and he didn't make me the other proposition until after the first of the year and I don't know whether it was the first—

4280

Q. Was there any writing or any correspondence between you in reference to these other two proposals, that he gave you stock or that you should go to New York as a broker? A. No, those were verbal.

Q. Between Mr. T. C. du Pont and you? A. T. C. du Pont.

Q. Well, now you testified about those matters in the government case, did you not Mr. Waddell? A. Only the papers, only the written documents, I wasn't asked in regard to the other.

4281

Q. You said nothing, you testified nothing in that case about these other two proposals that you now say were made to you? A. I don't think the question was put to me at all.

Q. Namely, that he should give you \$50,000 of stock or would help you or said to you to go to New York to buy their soda for them; you said nothing about those two proposals in the government case, did you? A. I don't think a question of that kind was put to me.

Q. Well, you said nothing about it on that oc-

4282

R. S. Waddell—Cross

casion, did you? A. I don't think I did; I don't recollect it.

Q. And you realize the importance of having it appear here that they offered you \$50,000 worth of stock to keep you in their business down there, do you not? A. No, I don't realize the importance of it.

Q. Do you realize that that would indicate that they thought you were a pretty valuable man? A. No, I don't think that they thought that.

4283

Q. Was there any consideration that you were to pay for that stock? A. No.

Q. They were simply to give you \$50,000 worth of stock? A. Well, there was some more conversation about that.

Q. Oh. A. That related to other people. Mr. du Pont said that he was going—that he expected to give—I don't think that he said that he had given or had mentioned it to the other people, but he expected to give \$25,000 of stock to Mr. Haskell and \$25,000 to Mr. Patterson, Charles Patterson and mentioned that he included me with the others.

4284

Q. Yes, but he was going to give \$50,000? A. No, the common wasn't worth anything.

Q. Yes; that is the other point; that you realized to be of importance about that testimony did you not Mr. Waddell as showing that that was watered stock, as you claim? A. Pure water, yes, that is all it was.

Q. That is why you testified to that conversation, isn't it? A. Oh, no, I testified because I was asked the question.

Q. And no other reason I take it; not because it was true? A. Absolutely true.

Mr. Abbott: If your Honor please I think this is altogether without justification.

The Court: The last question perhaps was.

Q. Well, now in this government case you were pretty insistent yourself in putting in all the information about these negotiations with Mr. du Pont, were you not? A. I didn't have a word to say in the government case; Judge Scarlett handled that entirely.

Q. Didn't you insist upon putting in all of these negotiations over Judge Scarlett's protest? A. He didn't protest as I understand it. 4286

Q. Weren't they put in with the specific statement that it was done at your request, with a statement on his part that he didn't see why they were material? A. I don't remember such a statement on his part.

Q. If so, why didn't you put in all the negotiations that you had with Mr. T. C. du Pont at that time? A. I put in all that—those papers were put in in explanation to an answer that I had made, and you wouldn't let me explain the answer in the government case, and in further explanation of my answer I pushed in those papers, and I couldn't put in any thing verbally unless I were asked a question and you didn't ask me. 4287

Q. Do you recollect in the government case, page 927, Vol. 2, "These papers relating to these powder negotiations were produced by the witness on the stand and asked by him to be placed on the record in explanation of his examination by Mr. Graham is now offered in evidence by the government." Under our objection; do you remember producing those and requesting that they be put in the case? A. In explanation of my answer.

Q. You requested it? A. Yes.

Q. Went right down through all of this corre-

4288

R. S. Waddell—Cross

spondence and these various propositions in regard to this partnership in a powder mill? A. Yes.

Q. And you put them all into that case? A. Written propositions there.

Q. Now, in testifying to the conversation, these negotiations with Mr. T. C. du Pont, you went into it at some length in the government's suit, did you not? A. Just as far as he asked me I went in.

4289

Q. Was there any specific question here on your direct examination as to those three separate propositions, some kind of a question here that you were asked there, wasn't it? (No answer).

Q. What was done after your resignation? A. I couldn't tell you sitting here what the questions were there and what the questions are here. If you will read them to me I will tell you, may be they are the same.

4290

Q. Vol. 1 page 217, of the government case, did you testify as follows: "After I handed in my resignation, on November 26, 1902, Mr. T. C. du Pont asked me what business I was going into. I said, 'I am going to build a powder mill.' He told me he would like to go in with me, that is, the du Pont Company, I said, 'I would be very glad to have you.' He said, 'You remain there idle another month and I will make you a proposition.' He made me a proposition which I declined. He made me another one, and that was declined. I think there were three or four propositions made, and negotiations continued." A. I mentioned those other propositions and gave him a chance to ask me about them.

Q. Oh, this is what you mean by the nitrate and the stock propositions—three or four other propositions? A. Three or four other propositions.

Q. You know that is not so Mr. Waddell, when you are talking about these two or three different

powder mill propositions in this answer? A. I don't know what I a mtalking about there but I know the questions were not put to me about any other except—

Q. Now, let us see the rest of it: "Mr. Hillis as general counsel and I had some correspondence and he presented contracts that were written up, providing that I should take 51% of the stock of the new company and the du Ponts or Hazard, or Lafin & Rand, the varying contracts that he drew, should be 49%. These negotiations continued up to the second day of February, the day I left, and I expected and believed, from all of the conversations and the papers that were submitted and the negotiations that had continued up to that time, the time of my walking out of their office, that they would be my partners in the powder business, in this mill that I was going to build. It was the first of February, and I purposely wanted to bring the negotiations to a head at that time, the first of the month, they had been pending for over two months. I knew, and the papers so stated, that is, the correspondence and conversations so stated that I would not be a party"—and so forth.

4292

4293

Q. Now then that was your statement of this proposition at that time, was it not Mr. Waddell?

A. As far as I was permitted to make it; you shut me off on cross examination and you wouldn't let me tell and then I got it in, my explanation of my answer, all that I could get in.

Q. You are in the habit of getting things in that way, is that what you mean, sort of an expert witness? A. I wanted to explain my answer but you wouldn't let me do it.

Q. There is no objection; do you see any objection to any of your talk here on any of these pages until where you said this? A. I don't know.

Q. Just look at it and see; you said we would not let you talk—any objection appear there? A. I remember Mr. Graham kicked like everything about these papers going in.

Q. Are there any objections there when you are telling about this conversation that you can pick out? A. About the conversation—I wasn't interrupted on that conversation.

Q. You were? A. Not in that statement I made, that one page statement.

Q. Then you stated there, did you not that when your resignation was sent in he called you down, you immediately began to negotiate about this powder mill proposition, isn't that the meaning of your statement? A. After I handed my resignation in on November 26, 1902, Mr. du Pont asked me what business I was going into. That I have related to-day.

Q. You meant it was six weeks after you handed in your resignation, do you now? A. "He asked me what business I was going into"—yes. "I said I am going to build a powder mill. He told me he would like to go in with me, that is the du Pont Company." That was later on when he made that proposition to me in that matter, but he had made me two or three propositions before that. "I said I will be very glad to have you. He said you remain idle another month." He didn't say that; that is a misprint.

Q. What? A. Be idle, I don't know what words were used there, but he didn't tell me to remain idle.

Q. That part of it is unimportant. A. "Another month and I will make you a proposition. He made me a proposition, which I declined. He made me another one, and that was declined. I think there were three or four propositions made and negotiations continued."

Q. Now right there, what subject do you say those negotiations were about? A. We were talking then about the written propositions I put in.

Q. To go into the powder business with him? A. To go in with him.

Q. Very good. A. "Mr. Hillis as general counsel and I had some correspondence, and he presented contracts." (Part of the same thing.) "that were written up, providing that I should take 51 per cent of the stock of the new company, and the du Ponts or Hazard, or Laflin & Rand, the varying contracts that he drew" (he drew them) "should take 49 per cent. These negotiations continued up to the second day of February, the day I left, and I expected and believed from all of the conversations and the papers that were submitted and the negotiations that had continued up to that time, the time of my walking out of their office, that they would be my partners in the powder business, in this mill that I was going to build. It was the first of February, and I purposely wanted to bring"——

4298

Q. Then as I understand it this was your statement of what happened about this time in the Government case, was it not Mr. Waddell? Was this your statement at that time? A. Yes; but not in reply to the same question that you put to me to-day. The conversation came up in different ways.

4299

Q. The principal differences are in your answers here and the ones that you gave in the Government suit? A. No; my statement here was on direct examination giving me an opportunity to state the whole matter. The statement that I made there was on cross examination limiting me to an answer in answer to a question.

Q. You didn't find any objection here, did you? A. Oh, no; I didn't in there; I just told the story.

4300

R. S. Waddell—Cross

Q. And in all of them, do you find the slightest suggestion in there of these other two propositions that you say were made to you? A. No; no one ever asked me about them.

Q. They were important propositions, weren't they? A. No; I don't think so; I turned them down promptly.

Q. Again on page 915 you refer to it, did you not? "No; with this explanation: When I tendered my resignation to Mr. du Pont he asked me what business I thought of going into. I told him I thought I should build a little powder mill. 'What capacity do you want to make your mill?' 'About 1200 kegs per day' and so on." There again you mean that you intended to have it understood that that conversation took place five or six weeks after you resigned, and two other important propositions had intervened, was that what you wanted us to understand at this other occasion? A. I don't want you to understand that those other propositions were important at all, I didn't regard them so.

4302

Q. Did you want us to understand that they intervened and also five weeks intervened before he said that he would go into the powder business with you, when you gave this testimony? A. Yes; he strung me along 5 or 6 weeks.

Q. Did you want us to so understand when you gave this testimony in the Government's suit? A. I wanted you to understand that he had made me these propositions I swore to there.

Q. And immediately upon your resignation, didn't you? A. Oh, I didn't say that, no.

Q. You wanted us to understand it, didn't you? A. I don't know how you get your understandings. I just simply said that between the time of my resignation and the second of February when I

left—I stayed with them 2 full months. In that time he asked me to remain over, it says in the book “idle,” “you remained there idle”—attended to your duties, “and we will make you a proposition.” He strung me along 30 or 40 days before I got it.

Q. I understand that is your present statement Mr. Waddell? A. Yes; and it was then.

Q. Is there anything in that book so far as you can recollect regarding these other two propositions? A. No; I wasn’t asked about them.

4304

Q. Do you remember stating this in New York: Did your letter of November 27th having been called to your attention—page 57: “Q. When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to? Q. This one of November 25th, that we have been talking about with him. Did you have these negotiations? With any one besides T. C. du Pont? A. The first proposal was made by Mr. du Pont to me in writing.” Now did you so testify? A. Yes.

Q. You say this conversation was then two or three days of November 25th, did you not? A. Yes.

4305

Q. And now you say it wasn’t until six weeks after and are both statements true? A. No; you misinterpret what I said. I didn’t say that these preliminary conversations and I haven’t testified here that these preliminary conversations took place in January. That is the time that the written documents, the formal agreements prepared by Mr. Hillis were submitted, in January.

Q. Didn’t you say here a few minutes ago that he never took up this proposition to go into the Powder business with you until four or five weeks after you resigned? A. No; I didn’t say that.

Q. You didn’t say so? A. No; I didn’t say so; you misunderstood me.

4306

R. S. Waddell—Cross

Q. Now what did you say. Did he take it up immediately? A. That testimony that you read to me—

Q. Did he take it up immediately? I am asking you now what the fact is. A. Let me go over that—

Q. No, answer my question; we don't need to go over it all again. Did he take it up with you immediately after your resignation? A. He sent for me to come to his room.

4307

Q. When? A. Several days after he received my resignation, probably a day or two or the next day, I don't know just when.

Q. On that occasion did he take up the question of going into the powder business with you? A. No.

Q. When did he take it up with you? A. He said it was my—just what I said here: "You remain here and I will make you a proposition." Now that was not made right at the time, it was made subsequently.

4308

Q. That was the first meeting? A. It was.

Q. Is that all that he said there? A. No; I don't know about that; I am not sure but he said at that meeting about the stock arrangement; and within a day or two or three days later he suggested this opening up—it may have been a week later, I could not tell you the hours, but I know on that occasion early in December he made me a proposition to go up to New York and open this brokerage office in which they would be my partners, and which he did subsequently open.

Q. Now, then, that does not answer my questions? A. You want the consecutive date—

Q. No, I want the first date on which he said he would go into the powder business with you? A. Oh, well—that was along in January, the occasion

on which he said he would go into the powder business with me. He said early in December, "You remain here;" and he had made me these other two propositions.

Q. Yes. A. "You remain here and attend to your duties and I will make you a proposition."

Q. On what subject? A. He didn't tell me.

Q. So you didn't know that he had it in his mind to go into the powder business with you until January? A. Not until he presented this agreement.

4310

Q. Until January? A. That is right.

Q. Consequently your statement in New York that within two or three days after November 25, 1902, he called you in and you had this conversation in which he proposed to go into the powder business—consequently that statement there is not true, is that correct? A. I don't think you quoted that properly.

Q. I read it to you.

Mr. Button: I am not required to read it all again?

4311

The Court: Oh, no.

A. You left out something.

Q. "When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to? Q. This one of November 25, 1902, that we have been talking about with him. Did you have those negotiations? With any one besides T. C. du Pont?" And then you went on and stated as I have read. Was that true? A. What have you read? That is the question about it, what you are quoting to me.

Q. Do you want me to read it all over again?

A. I don't think the statement is made in that

4312

R. S. Waddell—Cross

statement that I said in there in that he immediately upon my going into his room submitted written propositions to me to go into the powder business. I don't think I ever made any such statement.

4313

Q. That is my question: "Do you mean that when he first took the subject up he handed you a written proposal? A. No; there were negotiations. I went in—Mr. du Pont asked me to come into his room when he received my resignation, and he asked me why I was going to leave." And then you detailed this conversation. Among other things in the conversation that you told him at that time was that you wanted to go into the powder business did you not and he said that is all right and asked you how much money you wanted and you said \$75,000 cash. He told you he thought you had earned the right, did he not on that occasion? A. Yes.

4314

Q. And if you wanted to manufacture he would make you a proposition, is not that the proposition substantially? A. Did I say I wanted to manufacture, did I use that word, that I wanted to manufacture?

Q. He said wait and we will see—I don't know as you say exactly to manufacture? A. I think so.

Q. "And I said, 'I would be glad—' I better read this: "And he said, 'I think that you have earned the right Mr. Waddell to have a business of your own, and it is perfectly proper that you should provide for your family in this way. We would like to have you remain with us, but if you feel like you ought to go, we would like to join you in this enterprise,' and I said, 'I would be glad to have you do so, but Mr. du Pont, I don't want the business to go into the hands of a powder association. I want it to be entirely independent, and, in order

to make it so, I must own 51 per cent of the stock.' And he said, 'We will agree to that. You remain with us. You don't have to go at once. I see by your letter that you are willing to stay further.' 'Certainly I am.' 'You go on with your duties just as you have.'" A. My duties.

Q. Very well. You detailed that statement of the conversation that occurred within four days after your resignation in November, didn't you Mr. Waddell? A. I don't know how many days it was; I can't recall the days.

4316

Q. "When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to. Q. This one of November 25, 1902, that we have been talking about, with him. Did you have those negotiations with any one besides T. C. du Pont? A. No one except T. C. du Pont. Q. Who began them? A. The first proposal was made by Mr. du Pont to me in writing. Q. Do you mean that when he first took the subject up he handed you a written proposal? A. No; there were negotiations. I went in—Mr. du Pont asked me to come into his room when he received my resignation—" and you gave the detail of this conversation? A. Yes.

4317

Q. Is that correct? A. That is, in the main, correct? That is as well as I could relate it four times in succession—exactly the same thing. I may leave off a cross to a "t" or fail to dot an "i".

Q. Well this date was within a few days of November 25th, was it not that you detailed this conversation in New York? A. That I detailed that to you in New York?

Q. In this testimony, you place it as within three or four days of November 25th, 1902, did you not? A. That is when he first sent for me; yes.

Q. Very good. A. When he first sent for me it might have been two days after.

4318

R. S. Waddell—Cross

Q. And of course you wish to be understood that both these other transactions, these other proposals, were prior to any suggestions of going into the powder business, don't you? This one about being a broker and about getting 50,000 of stock?

Mr. Abbott: He didn't say that. Counsel interpolates that he has already said that.

Mr. Button: I asked him if he wished to be so understood.

4319

Mr. Abbott: He said directly to the contrary, your Honor.

The Court: Be fair with him.

Q. I understood him to say exactly that. He details this conversation, I suppose in the order, on direct examination and I have read it. His first proposition was to give him 50,000 of stock; his second was that he go to New York as a broker; and his third, a few days later, is the date which I understood from his direct examination he was to go into the powder business. A. Yes.

4320

Q. That is his testimony on direct examination. And now my question is: Do you wish to be understood that these other two propositions preceded this conversation with Mr. T. C. du Pont in which you talked over this partnership arrangement? A. That is my recollection of the sequence in which these propositions came; I may have been mistaken; one may have been ahead of the other. My recollection is—they were verbal, and I have nothing to refresh my memory, and it is ten years ago—but I think the first proposition was the stock. That he would give me stock. Now that may have been made within a day or two, or three days or five days and may have been that much before the next one. The next one in the order was to open this

brokerage business. Then it seems to me that there was a good long time that I walked the floor and waited on him and he came with his further written proposition. Now there may have been——

Q. Is this an answer to any question, Mr. Waddell? A. There may have been negotiations along between there, verbal negotiations about powder business; I don't know as to that, I don't recollect; but before I got the papers in concrete form—in the form of a contract, that came in in January, and I don't know whether it was the first week or the third week in January.

4322

Q. Do you mean to say you didn't undertake in the Government suit to detail all of your negotiations with Mr. du Pont, Mr. Waddell? A. I didn't undertake anything except to answer the questions as they were propounded to me.

Q. Didn't you undertake to give the complete situation between you and Mr. T. C. du Pont in that Government suit? A. No; I did not.

Q. Then did you not undertake in New York, also, to give a complete story of your relations with Mr. T. C. du Pont pending your resignation? A. I undertook to give a straight reply to your question.

4323

Q. Didn't you understand—didn't you undertake to detail all of those relations during that period up to the time you resigned? A. All that you asked me about I told you.

Q. And didn't you undertake to tell all that occurred between you and Mr. du Pont during those months on that occasion? A. No No; I didn't undertake to do anything of my own accord.

Q. But there was no suggestion in it as to these other two propositions, was there, anywhere? A. That I suggested any there?

Q. Yes, in New York or the Government suit?
A. I did not.

4324

R. S. Waddell—Cross

Q. Now, then, what corporation was it that Mr. du Pont was going to give you \$25,000 of preferred stock in and \$25,000 of common stock in? A. I don't know.

Q. He didn't tell you? A. Didn't tell me anything.

4325

Q. Do you know of any corporation in existence at that time, in which the du Pont Company was interested, that had any preferred and common stock? A. I don't know what they had; he didn't mention any of the stock, but merely mentioned the fact that he was going to put the preferred——

Q. One minute, I didn't ask you that. I asked you if you knew of any such corporation? A. I didn't know, no, sir; I didn't know anything about it.

Q. Did you know of any such corporation in existence at that time that had preferred and common stock? A. I didn't know what their stock was or any of the corporations.

4326

Q. Well, don't you know that there was no such corporation in existence at that time? A. No; I don't know it.

Q. And don't you know, it was not until six months later than that, that the powder company, with its preferred and common stock, was contemplated? A. Oh, I knew that the powder company was contemplated a good while—when they bought the Laffin & Rand I knew they were going to centralize the whole business.

Q. You knew in October, 1902, that it was contemplated to form the E. I. du Pont de Nemours Powder Company with preferred and common stock? A. I didn't know anything about the E. I. du Pont de Nemours Powder Company; but I knew the purpose was to concentrate all the interests owned by the Laffin & Rand and the du Pont, into one.

A. (Continuing) : Now, what form it would take, or what particular company it would be I didn't know.

Q. Then you didn't know what he was talking about, did you? A. No; he was doing the talking; I didn't know.

Q. Then you didn't know that the common stock would not be good for anything, did you? A. Well, I knew that that is what "common" meant; common meant "water" to me.

Q. Didn't you testify a few moments ago it was absolutely worthless? Now, what common stock were you talking about when you made that statement? A. I know that common stock as it is issued, as understood with preferred, the preferred represents the capital, and the common represents the water; and when he used the two in connection, I jumped at the conclusion perhaps.

4328

Q. So that statement in your testimony was simply a conclusion you jumped at? A. That is right.

Q. And you never knew any common stock, I take it, that was worth anything intrinsically, is that what you mean to say? A. Well, after you pay a dividend on it, it is worth something.

4329

Q. Did you ever know of any common stock that was worth something intrinsically? A. When it was first issued?

Q. Yes. A. Not in my experience, I don't know of any such, when it is issued in connection with the preferred.

Q. When was the Powder Company organized? A. I don't know.

Q. You stated the date in your declaration, didn't you? A. I didn't state anything in the declaration.

Q. That was not one of the facts which you gave to your counsel? A. They may have gotten it off of the record; I don't know.

4330

R. S. Waddell—Cross

Q. You don't remember giving it to them? A. They probably got it out of the Government record; I gave them those books, and they probably got the dates there.

Q. You know well enough, it was not organized when you left Wilmington, don't you, on February 2, 1903? A. I didn't know that it was organized.

Q. You never had heard of it at that date, had you? A. I had heard about a good many things.

4331

Q. Had you ever heard of the Powder Company at the date you left Wilmington? A. I don't know that I had.

Q. I understand that one of the principal objections Mr. Waddell, possibly the principal one, that you found, to these proposals that you go into the powder business with Mr. du Pont or the du Pont Companies, was the fact that they desired to have you put up two per cent of the stock of your company with the Wilmington Trust Company; is that correct? A. That was one of the objections, only one, though.

4332

Q. Was not that the principal one that you found to those proposals? A. No, I think not, not the principal one.

Q. Do you not recollect that you so stated in the Government record? A. I may have referred to it in some one of the papers as being the principal reason, but there were several of them.

Q. But I am trying to find out what the principal thing was that you split upon. On page 917 of Volume 2, did you not testify as follows: "XQ. Three things that you split on? A. Not only the different contracts, but there were other questions that arose. One was, that I should sell my powder to a company to be organized as a selling company. That I objected to. Then he fixed that up by saying, 'Sell it to the Laffin and

Rand Powder Company,' which company had been absorbed by the du Ponts prior to that time. There were quite a number of objections. I do not recollect all of them. There were quite a number of them, but the chief one was where they proposed to take my stock. XQ. That was the chief one? A. That was the chief one. XQ. That was the bad one? A. Yes." You so testified, did you not? A. That is right.

Q. I wish you would look at these proposals that have been introduced in evidence, Mr. Waddell. I show you Plaintiff's Exhibit No. 42. Is it not provided in that proposal that you shall own 51 per cent of the stock of the new company? A. (After examination): Yes.

4334

Q. I show you the next written proposal, which is Plaintiff's Exhibit No. 43. Is it not likewise provided in that that you shall own 51 per cent of the stock of the company? A. (After examination.) That is right.

Q. And in the third one, which is Plaintiff's Exhibit 44, was it not likewise so provided? That is at page 2113. A. (After examination.) That is right.

4335

Q. But you say that some arrangement was made or was suggested whereby two per cent was to be put with the Wilmington Trust Company. Now I show you Plaintiff's Exhibit No. 45 and ask you if that is not the agreement proposed under which that deposit of the two per cent of your stock was to be made? A. (After examination.) I think this is a copy of the paper B that was submitted—

Q. Well, that is the one under which your stock, or two per cent of it, was to be deposited with the trust company, was it not? A. Yes; that was the proposal. It was not executed, it was not signed.

Q. Well, none of them were executed, as I understand it. A. No.

4336

R. S. Waddell—Cross

Q. Now then, this Exhibit No. 45, that you objected to, as you recollect, provided that thirty shares of the proposed company, which is two per cent of the capital stock, should be placed in the hands of the Wilmington Trust Company, did it not? That is your recollection, is it not? A. There was a deposit to be placed with them.

4337

Q. And then the provisions in regard to what should happen to that stock were as follows, were they not: "Until default made, as hereinafter provided, the dividends on the said stock, if any, shall be the property of the said Robert S. Waddell, or his assigns. Should either of the following events happen, this company shall upon the written request of E. I. du Pont de Nemours and Company, and after it shall be satisfied that the said E. I. du Pont, de Nemours and Company has given at least five days' written notice to the said Robert S. Waddell, or his assigns of its intention to make the said request, be assigned and transferred absolutely, and free from any trust, unto the said E. I. du Pont, de Nemours and Company as its sole and exclusive property." You remember that? A. Yes, sir.

4338

Q. That is, you were to get five days' notice in writing of any proposed action toward the forfeiture of your stock? A. They were to give me five days' notice.

Q. How do you recollect that there were three events and three only in which that stock could be so disposed of according to this proposal? A. I don't know as to that.

Q. Well, the contract says that the events of default hereinbefore referred to should be the following: "First: If the said Buckeye Powder Company shall sell to any person or persons, corporation or corporations, any of its output or product except in accordance with the terms of a certain contract,

made and entered into on the day of _____, A. D. Nineteen hundred and three, by and between the said Buckeye Powder Company and the Laffin and Rand Powder Company, a copy of which contract is hereto annexed, Marked 'A.' You recollect that was the first proposed default, do you not? A. Yes, I objected to that contract A.

Q. Undoubtedly; but that was a contract under which you agreed to turn over all the product of your mill to the Laffin & Rand Company, did you not? A. Agreed to sell it to them, yes. 4340

Q. And this simply means that if you failed to carry out that contract and sold it to somebody else, they could forfeit the two per cent of your stock, does it not? A. Well, you will have to read paper A to get the right understanding of that.

Q. What was there in the paper A that would govern the two per cent so far as the two per cent went? A. There are a number of modifications.

Q. I understand. But I am not asking you that; I am asking you what there was in paper A that would modify this situation upon which you would forfeit two per cent of your stock? A. I don't recollect now just what my view was at the time. but I know it looked like a summary proceeding to me, that the du Ponts were judges and executioners and everything else. (Motion to strike out the answer sustained.) 4341

Q. Can you state definitely anything in contract A that affected this default? A. I can't remember. There were three contracts altogether. They were joint. One was a part of the other. I know that my interpretation of it at the time was that they had to be read jointly.

Q. Very good. But that default was perfectly definite, a small amount, and you so understood, did you not, Mr. Waddell, that if you carried out

your contract A you would have no trouble with the two per cent of your stock; you understood that, did you not? A. Yes, but it was impossible to carry out the contract.

Q. Then your objection was to contract A rather than to this two per cent? A. It was to the combined three contracts all in one, and one made a part of the other.

Q. But you have stated repeatedly that this putting up of two per cent of your stock was something that you very strenuously objected to. Now so far as this first default goes it was simply to be put up as collateral security to see that you carried out contract A, was it not? That is all there was to that default, was it not? A. Well, it had to be read in connection with contract A, it had to be read in connection with contract B and it had to be read in connection with contract C.

Q. We are coming to contracts B and C in a few moments; we cannot do it all at once. A. One depended on the other. I objected to putting up my two per cent and forfeiting the ownership of a business on the connection that was made with the other contractors.

Q. We understand that you objected to forfeiting the control, of course; but so far as this provision goes, there was no danger of your forfeiting the control unless you broke your contract A, was there? A. Certainly the whole thing would have to go; but that was the finality of it, the putting up of the stock was the end of my control of the business.

Q. Can you not answer that question, Mr. Waddell? A. If you want to treat contract B as a separate and distinct contract, having no bearing on the others—

Q. Well, here was a written contract providing

for three separate and distinct defaults, upon any one of which this stock could be forfeited? A. Yes.

Q. Now so far as the first default goes, was there anything in it that would hurt you so long as you carried out your contract A? (Objection overruled.) A. I have not read them in years. I do not know just what the terms are. I know they were objectionable. My letter sums them up.

Q. I understand; but you have testified that this two per cent was not only objectionable, but was the chief thing you split on. You have further testified that this particular stock was to be put up under this particular contract. A. No; I don't want to say that was the chief thing we split on. That was the chief thing that influenced me in the declaration of that contract, entering into that contract. I don't know that Mr. du Pont split on the question at all; I think not.

4346

Q. It is the chief thing that prevented you from making the arrangements, was it not? A. I objected to it, put in that form.

Q. Well now, can you not answer the question that I have asked repeatedly, whether that first default was any danger in your opinion to your stock so long as you carried out your contract A? A. Taken in connection with contract A it was objectionable.

4347

Q. And by that you mean that there were provisions in contract A that you objected to; is that it? A. Yes, I did.

Q. But if you had settled upon contract A, then you would have had no objection to putting up this security to carry it out, would you? A. I offered to put up security.

Q. You would have had no objection if you had got a satisfactory arrangement about contract A; is that what you mean? A. Along fair lines, I

4348

R. S. Waddell—Cross

would not have objected to putting up security; but not in the way they wanted it there. I suggested another method of doing it.

Q. The second default mentioned in this contract is: "If the said Buckeye Powder Company shall refuse, or neglect to manufacture and supply to the Laffin and Rand Powder Company the powder, as agreed upon in the said contract, marked A." You recollect that was the second event in which you could sell this stock or take this stock, do you not?

4349 A. Yes; that was under contract "A."

Q. That was definite, was it not? A. Yes.

Q. And the third and last event in this contract was: "If the said Robert S. Waddell shall engage in, or be directly, or indirectly interested in the manufacture or sale of explosives, except for the said Buckeye Powder Company, the agreement covering which is contained in a certain contract between the said Robert S. Waddell and the said E. I. du Pont, de Nemours and Company bearing date the day of , A. D., nineteen hundred and three, a copy of which contract is hereto annexed, marked "A." That was the third and last event, was it not—if you went into the powder business, outside of this contract? A. Yes; they were putting me right in it in the contract. They were providing that I should sell the output of the Buckeye Mills which had been sold to Laffin and Rand, that I should go in and sell it for Laffin and Rand.

4350

Q. And you thought this was a breach of this provision? A. Sure, it was.

Q. For instance, here is a provision that says you shall not be interested in the sale of explosives except for the Buckeye Powder Company. A. That is right.

Q. And therefore you say that if you did sell for the Buckeye Powder Company you would be break-

ing that provision? A. No; I was to sell the output for the Laffin and Rand Company.

Q. Under a contract mentioned in this same instrument, was it not? A. It was on another one, yes.

Q. Mentioned in this same contract, was it not? A. There were three contracts.

Q. It was mentioned in here, was it not? A. Yes, but not in that clause; but in the forfeiture there.

Q. So that was your interpretation of the contract and you objected to the two per cent being put up? A. The way they had it written; that is what I objected to.

4352

Q. That is, you thought that because this powder was to be turned over to Laffin and Rand and sold by you it would be a breach of this provision which says that you shall not engage in the powder business except for the Buckeye— A. Yes, I was engaging in the powder business then for the Laffin and Rand Company.

Q. Do you still think that would have been a breach of this contract? A. That was my judgment. Possibly I may have been mistaken.

4353

Q. Now I call attention to Plaintiff's Exhibit No. 44 concerning which you have testified, that it is a contract on which you made memorandum on the side. I call attention to the part of it on page 2114. The word "waived" is your word, is it not? A. Yes; those are my notations on the side there; but I don't know whether he waived it or what it was that was waived.

Q. The thing that was waived was this, was it not: "It is further agreed that the party of the first part shall assign and have transferred to the Company thirty shares of the capital stock of the said Buckeye Powder Company subject to the terms and conditions set forth in the receipt

4354

R. S. Waddell—Cross

to be signed by the said Trust Company in the form hereto annexed, and marked 'A.' " Consequently, after all this discussion that particular thing you objected to was waived, wasn't it? A. Yes; but I don't know whether it was waived by Mr. du Pont or me.

4355

Q. You mean when you put that down there you were waiving it? A. No, I was not waiving it. I wrote a separate contract commenting upon this and presented it to you, presented it to Mr. du Pont, stating how I would be willing to put that stock up. I was perfectly willing to give the security.

Q. Now you say that T. C. du Pont made these propositions to you, Mr. Waddell, do you? A. Mr. du Pont made the first proposition to me. I commented on it, and we exchanged probably six or eight comments, changes, new suggestions, all based on that general line of contract that he had drawn. I think there were about five or six. I know I wrote a lot of letters on the subject.

4356

Q. Is that your letter (indicating?) A. (After examination.) That is my signature.

Q. To Mr. Hilles? A. Yes.

Q. You never mentioned but three written propositions in your evidence heretofore, did you? A. No; I was never asked about any more than that. Some of them were letters and a number of them were modifications of—

Q. Do you mean to say that you have not testified on repeated occasions that there were three written propositions in this matter? A. There were three named here—

Q. And you meant by that there were three or more? A. They were all based on the first proposition that was made, starting out with that.

Q. You mean by the expression that there were three to say that there were three or more? A. Did

I mean by the statement that there were three that there were three or more?

Q. Yes; you have stated repeatedly that there were three written propositions. A. Yes.

Q. By that you mean that there were three or more? A. There were quite a number of them; comments on the three or on the first one.

Q. Then there were three propositions with the comments on them? A. Yes; comments on them; changes. The method of making suggestions as to different items in the main proposition.

4358

(The paper referred to was marked, for identification, Defendant's Exhibit A 203.)

Q. Do you recollect, to begin with, that Mr. Hilles was the counsel for the du Pont Company in January, 1903, as you understood? A. Yes.

Q. He was assisting you and Mr. du Pont to get together on this thing? A. I understood he wrote the papers.

Q. He wrote some papers and you addressed your correspondence, or some of it, to him, did you not, on this subject? A. Yes; when he sent those three papers to me.

4359

Q. In writing this letter to Mr. Hilles, January 12, 1903, do you remember stating in it, "in presenting the proposition which you have now put in formal shape, I had no intention of buying the majority interest in a business, and submitting it entirely to the control of the minority, and then give security to the minority that I would comply with its wishes, or forfeit my property on five days' notice." Do you recollect writing that? A. No, I do not recollect writing it. I recollect my signature to that letter.

Q. Do you further recollect writing in the same letter the following: "In making this proposition,

4360

R. S. Waddell—Cross

the opportunity for a better business future was waived. An independent connection would be preferable to this one, under the restrictions in these papers." Do you recollect writing that? A. No, I do not recollect the language. If you let me read the letter I can tell you whether I wrote it.

Q. Won't you look this letter over and say whether you wrote those things at that time? A. (After examination.) Yes.

4361

(The letter referred to was marked Defendant's Exhibit A-203.)

Q. That letter was within a couple of months of this letter of November 10, 1902, in which you state that the du Pont ought to take their best men into business with them, was it not, Mr. Waddell? A. I don't recollect the date. I recollect the letter from Mr. Moxham, asking me what coal contractors would go into the powder business.

4362

Q. And you recollect that was about November 10, 1902, do you not? A. I don't remember the date.

Q. Can you state what this document is, Mr. Waddell (indicating)? A. It appears to be a program.

Q. A program of what? A. Of the Grand American Handicap.

Q. You are familiar with it? A. I can't say that I am, but I will look at it and see.

Q. I wish you would. A. (After examination.) Live bird tournament at Kansas City, Mo., March 31 to April 5, 1902.

Q. That is the program of the Grand American Handicap that you attended in that year; is it not? A. Yes; that is the last one that was held in Kansas City.

Q. This is the only one that was ever held in Kansas City up to that date, is it not? A. I don't know as to that. That is the only one I attended.

Q. Please look on this program at the bottom of page 3 and state if that refreshes your recollection as to whether one of those tournaments was ever held in the West before that date? A. If that statement is made there I presume it is true. I don't know.

Q. Then you did see Mr. Rice at this tournament in Kansas City some time between March—

Q. What is the date? A. April 5th.

Q. Sometime between March 31 and April 5, 1902, did you not? A. Mr. Rice was there; yes, sir. 4364

Q. You saw him and talked with him between those dates, did you not? A. I didn't talk to him except to speak to him occasionally.

Q. Then your statement the other day here was not true, was it? Do you recollect testifying as follows: "Q. Do you remember going to this great American Handicap meeting in Kansas City? I think it was in April, 1902? A. No, sir; there wasn't any such meeting held. Q. When was it held? A. In 1901, the year before. Q. You are sure about that? A. Yes, I am quite sure." That was incorrect, was it? A. Yes; I was wrong in the date. 4365

Q. And this occasion on which you were there and Mr. Rice was also there was within two weeks of the time you wrote Defendant's Exhibit A, No. 200, in which you stated, "I am going to break into the powder business and kindred lines," was it not? A. (After examination.) This was written before that.

Q. I say it was written within two weeks of the time you went there and Mr. Rice went there, was it not? A. Yes; but this refers to the former correspondence we had on the same subject.

Q. It also refers to the fact that you had come to the conclusion that the Lord helps the man who

helps himself, does it not? A. Yes; they had practically cleaned out the Cincinnati office.

(The pamphlet referred to was marked Defendant's Exhibit A 204.)

4367 Q. When you left Wilmington you say you took options on various machinery, options that ran about thirty days. When did you finally close your contract for machinery, Mr. Waddell? A. It was after I made up the stock and after I got the location of the plants. It must have been, well I don't know how long, but several days, several weeks perhaps.

Q. Was it days or weeks? A. I don't know just how long I was hunting a site. I had to know that before I could tell them where to ship, or what the contract would be, what the delivery would be. It was quite a little time.

4368 Q. Well, you recollect pretty well that you went directly to York, Pennsylvania, and got an option, as you say— A. For sixty days —

Q. For most of your machinery, and then you went to Hamilton, Ohio, and Dayton, Ohio, and got options on electric machinery and other machinery? A. Yes.

Q. That was almost immediately after you left Wilmington, was it not? A. Well, of course it took time to get around—several days.

Q. It was not more than two weeks that it took you to do that, was it? A. I don't think it was more than two weeks.

Q. Now then, having those options, how long did it take you to decide to take them up and have the machinery furnished? A. I had to go to Illinois. I travelled in Illinois some little time before I found a site, before I located, and then we had to make

arrangements to get—there was a good deal more machinery than was included in the direct powder machinery.

Q. Well, did you close those contracts just as soon as you selected your site? A. I don't recollect; nearly as soon or very soon after.

Q. From whom did you buy this site; do you recollect that? I don't necessarily mean who owned the land, but who negotiated to sell it? A. A man by the name of Augerson was the real estate agent.

Q. In Peoria? A. Yes; I hunted the site first and then I got him to negotiate the options, and it took me some little time— 4370

Q. How long were you hunting sites? A. Well, I should think three weeks.

Q. How long? A. Perhaps three or four weeks. Then I had to take up questions with the C. B. & Q. Railroad in Chicago about freight rates, to know what rates I could get out of there. There were a number of questions before I could determine. My option was for sixty days on the land.

Q. And it was during that period that you say you travelled part of the time under an assumed name? A. Yes. After I left Cincinnati up to the time I got the options I did not use my own name. 4371

Q. And you had considerable difficulty in selecting this site? A. Finding it?

Q. Yes. A. A. Oh, yes.

Q. That is because you considered it essential to have the just right lay of land and the right location, considering dwelling houses, and so forth? A. I did, to comply with the law, yes.

Q. But you did finally get a site that you thought was a very good one, did you not? A. I thought so.

Q. Do you not remember that you bought that machinery, or closed the contract for it, as early as March, 1903? A. I don't remember when the con-

4372

R. S. Waddell—Cross

tract was closed. I left Wilmington, Delaware, on the 5th of February.

Q. Do you recollect writing this letter to Mr. Hilles on those subjects (handing witness letter?)

A. (After examination.) There does not appear to be any date on it.

Q. Well, it appears to be an answer to a letter from Mr. Hilles on the 17th, does it not? A. (After examination.) That is my signature.

4373 Q. And in your handwriting, is it not? A. It is in my handwriting, yes.

Q. And it is an answer or purports to be an answer from a letter you had received from Mr. Hilles on the 17th instant, does it not? A. That is my signature.

Q. And in your handwriting, is it not? A. In my handwriting, yes.

4374 Q. And it is an answer, or purports to be, to a letter you had received from Mr. Hilles on the 17th instant, is it not? A. (After examination.) No; it says, the 18th instant. It speaks of his letter of the 18th, requesting that I send certificate of incorporation.

Q. I show you what purports to be copy of a letter from you to Mr. Hilles dated February 18, 1903, and ask you if your letter was not in answer to the original of that? A. (After examination.) This bears date February 18th. I don't know whether it was or not.

Q. Do you not recollect receiving such a letter from Mr. Hilles? A. No, I have no recollection of it.

Q. Would you have the original of this? A. There was no copy taken of it, I think.

Q. No, no, I mean the copy of this Hilles letter to you. A. I don't know. My wife may have enclosed it.

Q. You have not any doubt that you received a letter of this sort from Mr. Hilles within two or three weeks after you left Wilmington, have you?

A. I recollect that there was a mistake made in the certificate of incorporation.

Q. And you recollect it was called to your attention very shortly after you left Wilmington, do you not? A. I think that that was about the time I left there or before I left that the error occurred, or soon after.

4376

Letters received in evidence as Defendant's Exhibits A-205, A-206.

Q. This letter marked A-206 is dated Wilmington, Delaware, February 18, 1903, and reads as follows:

“(COPY)”

Wilmington, Del., Feb. 18, 1903.

Robert S. Waddell, Esq.,
%E. I. du Pont de Nemours & Company,
Wilmington, Del.

4377

Dear Sir:—

Will you kindly let me have the certified copy of the Certificate of Incorporation of the Buckeye Powder Company? The Secretary of State or the Recorder has made a mistake in dates which is very material, and which should be corrected at once.

Yours very truly,
Wm. S. Hilles,
Per M.”

4378

R. S. Waddell—Cross

The answer, in part, reads:

"Wm. S. Hilles, Esq.,
904 Market Street, Wil., Del.

Dear Sir:—

4379

My wife forwards your letter 18th inst. requesting that I send you the certificate of incorporation of Buckeye P. Co. I regret that I have not the paper with me but have an exact copy of it in all details. The dates on the paper are all correct and as soon as I return to Chicago I will get and either forward the paper or bring it with me to Wilm., as I am through work and will return home for three or four weeks. I was very fortunate getting the company started. The third man on whom I called at Chicago said he would take the 49% of stock. He had a very large tract of ground and it did not take long to fix things so that I could get a location for my mills without the effort of looking up a site during the winter months. All contracts for machinery are placed and there is very little I can do now toward putting up buildings. I now give you the dates on the Incorporation Certificate & they are correct as I recollect them distinctly." Then follows two pages of describing dates, on the certificate of incorporation, which I will not read, as they seem to be immaterial. Who was the man in Chicago with whom you fixed up your site? A. I busted on that arrangement. That was Mr. F. S. Peabody, Frank Peabody, who wanted to take 49 per cent. He made a condition later that I could not comply with. He did not take any stock in the company, and that whole thing blew over.

4380

Q. Your complaint states as follows: "And with this end in view they placed detectives on the track

of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabout, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid." Did you furnish the information for that statement in your complaint, Mr. Waddell? A. Yes.

4382

Q. Where did they bid up any property that you were trying to buy? A. I don't understand that that is what it says there.

Q. Then you don't know that they did anything of that sort? A. I don't know. I know what the general plan was.

4383

Q. I am not asking about that. In any instance where you were endeavoring to buy property, did they bid up the property on you? A. I don't know.

Q. Were you present when they were hired? A. No. I didn't know anything of it.

Q. And you didn't see anything of that until after about two or three weeks, did you? A. I should think about that time. I don't know just when.

Q. And the Allentown Foundry & Machine Company. Where was that? A. Allentown, Pennsylvania.

Q. Do you know when it was you applied to them? A. The first time I applied to them was, I should think, about March or April, 1903. It may have been May. And then again, in the fall.

Q. You did not take occasion on your direct examination to mention the fact that you had bought machinery of the Allentown Foundry Company, did you? A. I bought it a year afterwards, after I commenced building the mills.

Q. A year after. About when? A. I think I bought the Press in January, 1904.

Q. That is you paid for it on January, 1904, did you not, a complete horizontal press, paying \$3400 for it? A. I presume I paid cash for it.

4385

Q. Well, you had purchased it some time before you paid for it, had you not? A. Yes.

Q. Or arranged for its purchase? A. Yes; I may have arranged in December. I don't recollect dates exactly or I didn't at that time.

Q. Well, you do not recollect saying anything about that on your direct examination, do you? A. Yes, sir; I think I spoke of the Allentown press being the one that I used, the horizontal press. I put it in in place of an upright press, and Mr. Olin testified to it.

4386

Q. I will ask you how much of the stock of the Buckeye Company you took at that time yourself? A. Fifty-one per cent when we organized.

Q. How long did you hold the control in that way? A. Not very long, just until a little after we commenced building the mills, when I let part of it go to personal friends.

Q. How much did you have left after you sold what you cared to sell? A. My recollection is \$38,600 out of \$100,000 worth. Maybe it was \$38,200, but about \$38,600, I think; that is, myself and my boys together.

Q. That would be about 36 or 37 per cent. of it? A. 38 per cent and a fraction. I let Mr. Luthy have \$5,000; and I let Colonel Ditewig and Mr. McElwee have \$4,000 of it.

Q. Do you, or your boys, still own 37 or 38 per cent. of it? A. Yes.

Q. In your own right? A. Yes.

Mr. Abbott: I would state that Mr. Button called for the stock books some time ago. I do not see the materiality of it, but if he wants those stock books he can have them.

Q. Then the entire beneficial ownership of the stock will be shown in the stock books? A. I think so, yes.

Q. That is the shares, so far as you know, are absolutely owned by the people in whose names the certificates appear on the stock books? A. Yes. 4388

Q. There is no contract about them, or no arrangement outside? A. No, none that I know of.

Q. And you own yourself absolutely, you and your sons, do you, the amount of stock you have mentioned? A. I do, yes.

Q. Now, you have stated, Mr. Waddell, that the plant that you built cost in the aggregate \$117,000, but you are unable to separate the different portions of that cost except so far as the land goes, which cost something over \$5,000. Where do you get those figures of \$117,000? A. Construction was the first account we had. That was the original building of the mills; and improvement account was for the increase in the capacity of the mills; and the two together make up the total cost, plus—well, we were found to be in error, that we had charged something to repairs that the auditors told us should not be there. 4389

Q. That was a matter of two or three hundred dollars? A. I don't remember what the amount was, but they told us that we should have charged it to plant account instead of to repairs account, at the time the audit was made. The total, as I remember, was a trifle less than the \$117,000.

Q. As I understand your testimony, you first

4390

R. S. Waddell—Cross

started in and put in part of the machinery and later put in more. How many wheel mills did you put in first? A. The first construction was two wheel mills, and then we put in a third one. We ran quite a time with the third wheel and then later on, under improvement account, we put in the fourth wheel.

Q. Was it a wheel that blew up in January, 1904, or some other machine? A. That was a press, the upright press.

4391

Q. So, eventually, you had four sets of wheels? A. Four pairs of wheels, yes.

Q. And you put in the last two some time in 1904? A. All of them were in, I think, in 1904.

Q. You must have had the first two in 1903? A. In 1903.

Q. And the other two in 1904? A. I think so.

Q. These two accounts, "Construction" and "Improvements," were those the name of the accounts? A. That is my recollection of it—"Construction and improvement accounts."

4392

Q. Will you state whether or not your books as of December 31, 1908, under the two following accounts, show the following facts: Construction account; total, \$64,519.37. Improvement account; \$44,707.29. Plus the difference pointed out by somebody, \$263.52. That makes altogether, \$109,226.66. Now, will you look at the accounts I will show you in a moment and state whether that is correct or not? A. Yes, but you have omitted the boarding house.

Q. Very good, but I will give you that in a moment. Can you state without the book that that is correct? A. No, I cannot.

Q. Then there is another account, the boarding-house account. A. Yes, we built a boarding house.

Q. That is \$3,167.07. Do you recollect that?

(Objection overruled.) A. I don't recollect the amount.

Objection to further examination of the witness regarding the books.

Q. Do you recollect whether you charged any salaries in the construction account? (Objection overruled.) A. I don't recollect what was charged in it. I know everything that entered into construction was charged to the account when we were building mills. 4394

Q. Do you recollect whether any salaries were charged to him? A. I don't know what went in the items.

Q. Will you look at the book marked in evidence P-73, on page 12 of this book, and state whether the balance of your construction account as of May 31, 1906, was \$64,519.37?

Mr. Abbott: Now, if your Honor please, I object to that question, because it refers to the book, or a book, one of the books of the company, and the reason I object to the question is this. If counsel wants to introduce that book or the books for the purposes which he now has in mind, we have no objection; but it is not cross-examination. We did not introduce the books for any such purpose, and we ask that counsel be restricted to the purposes for which we introduced the books, or if he wants to take the books and introduce them for his own purposes, we have no objection to that; but we do object to being made responsible for some account which we did not bring out on direct examination, or for some purpose for 4395

4396

R. S. Waddell—Cross

which we did not offer the books on direct examination. We said this—and we stand by it and reiterate it: That these books were here for any purpose that might be legitimate, regarding any issue in this case, but we want counsel to take the responsibility now, and if he proposes to bring out some account here that we have not undertaken to question regarding on direct examination, let him introduce the books himself covering that matter, as we desire ourselves to have the books go in evidence.

4397

The Court: You have got evidence, have you not, as to the cost of the plant?

Mr. Abbott: Yes, but not from any statement in the books.

The Court: The books are in evidence?

Mr. Abbott: Yes.

The Court: And they are here for any legitimate purpose.

Mr. Abbott: That is all very true.

4398

The Court: Not merely the purpose you introduced them for.

Mr. Abbott: But do not misunderstand me in this. Your Honor required me to state, when I offered the books, what the purpose was.

The Court: To determine whether they were admissable or not.

Mr. Abbott: No, your Honor required me to state that they were for the purpose of showing the status of the accounts with our customers; that is to say, I went on and recited that they would show the date, the name of the customer, the amount of goods sold at different times, and the prices paid, and that was the only purpose we offered

them for—and any purpose that had anything to do with that issue.

The Court: I asked you those questions, Mr. Abbott, to determine whether they were admissible. The evidence being admissible for one purpose, it is admissible for any legitimate purpose in the issue.

Mr. Button: I will say this. If counsel will stipulate that the books are in evidence only for the purpose of showing the relationship between the Buckeye Company and its customers, that will be satisfactory. There was no such limitation at the time they were introduced, but if that is satisfactory, I will so stipulate.

4400

Mr. Abbott: I am willing that they should be introduced for any purpose that is legitimate, but if counsel wants them for that purpose I want him to introduce them.

The Court: When they are once introduced, of course, they are in the case for any legitimate purpose, and you are bound by them.

4401

Mr. Button: Then I understand that that stipulation is not satisfactory?

Mr. Abbott: I do not care to make any further argument if your Honor rules the books are before the Court—

The Court: Let us go on.

Mr. Button: Do I correctly understand your Honor's ruling, that the books are in for all purposes?

The Court: For all purposes that are legitimate to the issue, certainly.

Mr. Button: I could shorten this a great deal if I could know whether that is all that is claimed in reference to the books.

4402

R. S. Waddell—Cross

The Court: I hope counsel will try to keep everything out that is not esesential to the case.

Mr. Button: If counsel will state now that he desires the books to be in evidence only for the purpose of showing the relationship between the Buckeye Powder Company and its customers, that will be satisfactory to me.

4403

Mr. Abbott: I have said all that I care to in reference to it.

The Court: Will you answer the question?

Mr. Abbott: I do not care to limit it. The books are here for all legitimate purposes, as I said at the beginning.

The Court: Very well. Go on.

By Mr. Button:

4404

Q. Now will you answer the question, Mr. Waddell, whether the construction account on that date shows a balance—— A. (Interposing) Of \$64,519.37.

Q. On the previous page what does the improvement account show? A. \$44,707.29. Real estate, \$5,400; boarding house, \$3,167.07.

Q. There are those four items, are there, those four accounts? A. Yes. I don't know whether office and mill furniture went into it or not.

Q. Well, count that in. That is \$542.21? A. Yes.

Q. That would add up \$118,385.94? A. Perhaps they do.

Q. I will read them: Construction, \$64,519.37; Improvements, \$44,707.29; Boarding house, \$3,167.07; Plant and real estate, \$5,450.00; Furniture

and fixtures, \$542.21; total, \$118,385.94. I will venture to say that they are approximately \$118,385.94. It can be verified. Now that is the source of your information which you gave on direct examination, that the plant cost approximately \$117,000? A. Yes, sir.

Q. First, in regard to salaries: Do you know, Mr. Waddell, that your salary was treated in this way during all this period? Take this item on page 61 of the book, which has been marked P-60. I find here August 3, R. S. Waddell, on account. A. August 3, what year?

4406

Q. It is 1903, I think. A. I think it is years afterwards. It is 1907 there, previous to this (indicating on book).

Q. Do you take it that your salary, the way it was handled, was put through the bills payable account? A. Bills payable? No.

Q. I show you another book, marked P-62, and it seems to be a journal. On page 3, under date of June 30, 1903, you will observe your salary for June charged up to construction. Do you see that? A. Yes.

4407

Q. And that of your two sons? A. Yes, sir; we were all working at the plant.

Q. That is during June. Now, during the previous month, May, does the same thing occur on page 2 of the same book? A. Charged to construction and credited to each of our accounts.

Q. And through down in July, on page 4, is that correct—the same thing? A. Yes.

Q. And August, on page 5, the same thing? A. Yes.

Q. And in September, on page 6? A. Yes.

Q. And October, on page 8. The services of yourself and your son, R. S. Waddell? A. Yes, sir.

Q. That is in October? A. The doctor was not there then.

4408

R. S. Waddell—Cross

Q. That is, N. C. Waddell was not there? A. N. C. Waddell was not there.

Q. Please look at page 11 of that book and state whether or not the salary of yourself and your son R. S. Waddell, Jr., for that month was charged to construction? A. No, charged to salary account.

Q. Journal 11? A. Journal 11, charged to salary account, and charged to us. Construction was over then.

4409

Q. On page 17— A. Charged to salary and credited to our account.

Q. These last two months you have mentioned, pages 11 and 17 of this Journal, for November and December of 1911, were carried through the salary account, were they? A. Yes, sir.

Q. I show you book marked P-71 and call your attention to a sheet here that is marked sheet No. 1, account No. 8, "Salary." (Objection overruled.)

4410

Q. Looking at that sheet, I called attention to, will you not state whether this was transferred, this salary, to the construction account, the salary for the last months, December 31, 1903, these two items being November 31 and December 31, officers, \$500 each, the first two items on that sheet, aggregating a thousand dollars on December 31, 1903, transferred back to the construction account, were they not? A. I don't know enough about it to tell you that. I could read it to you. Show me the journal and maybe I can tell by that.

Q. The journal is the entry from page 11, that I called attention to in the previous book, which was your salary and R. S. Waddell, Jr.'s, salary, at page 11, which is put in the salary account, \$416.66 to you and \$84.34 to R. S. Waddell, Jr., making \$500 in the aggregate. You will find the first item on this last sheet, account No. 8, sheet 31, taken from Journal, page 11. Do you find that? A. Yes.

Q. The next month's salary was on the 17th page of the journal, the same kind of an entry? A. Yes, sir.

Q. And salaries aggregating \$500, you find that under December 31, posted from Journal, page 17, \$500, do you not? A. Yes.

Q. And on the other side of the account, December 31, 1903, you find the entire thousand dollars taken back to the construction account. Still on sheet No. 1 of account No. 8. A. Closing for the year.

4412

Q. That indicates that your salary up to December 31 was so charged? A. To January 1st.

Q. January 1st, 1904? A. Yes. I was probably working on construction then, getting that new press.

Q. Do you recollect how long you continued to charge your salaries and your sons' salaries to construction? A. It must have gone to "Improvement" after that, I should think. We were putting a new press in and building some mills.

Q. Will you look at this same journal on page 57 and state whether or not a lot more salary was not treated in the same way? A. (After examination.) That is "Improvement."

4413

Q. No, wait a minute. Let us find the item. Salary to the improvement account, \$1,750?? A. (After examination.) Yes. That was putting in the new mills.

Q. That was salary from January 15 to May 1st, 1904, was it not? A. I don't know.

Q. Here is the notation. A. From January 15 to May 1.

Q. To May 1, 1904? A. That is up to the 30th of April. That is when we were putting in the new mills and press.

Q. And on the same page, from February 1 to May 1, 1904, do you find \$720 salary of the super-

intendent and engineer charged in the same way—the second item? A. Yes.

Q. That is charged to the same improvement account? A. Yes, putting in the machinery.

Q. That improvement account is one of those that went in to make this \$117,000, is it not? A. Yes. Whether you call it labor or salary, we had to put the stuff up.

Q. Consequently, up to May 1st, 1904, during the entire period, you charged all your salaries and your sons' salaries to the construction of that plant, did you not? A. We did. I was right on that plant all the time.

Q. A part of that time you charged part of the salary of your other son, N. C. Waddell? A. Yes, he was superintending the mill.

Q. And you had an explosion during that time? A. Yes.

Q. A part of those repairs were due to that explosion, were they not? A. No; we had an entirely new press bought. We didn't repair that.

Q. The press that was originally put in and which did explode was charged up to one of those accounts, was it not? A. Originally built? Yes.

Q. How much did that press cost, do you recollect? A. No. I should think about \$1,500 or \$1,600.

Q. You bought a horizontal press in January, 1904, that cost you \$3,400, did you not? A. Yes. That is a bigger press, five times as big.

Q. You do not recollect any place that the cost of that press that blew up was taken out of this construction account, do you? A. I don't know anything about the items on the books. They will have to speak for themselves.

Q. If it was not taken out the result would be that there would be that much more than there

should be in your \$117,000 or \$118,000? That is, you do not think the value of the exploded press should be charged to the value of your plant, do you, if it is so charged? A. No. I don't know anything about how that was. It may have been charged for.

Q. The next time you had an explosion, what machinery blew up? A. This Allentown press.

Q. That \$3,400 press? A. Yes; but it didn't hurt the press any.

Q. That is, no machinery was destroyed? A. 4418
No, just the shell, the little building that covered it. The same press is in use now.

Q. I call your attention to account No. 9, sheet No. 1, in the last book that was referred to, it being a general expense account, so-called—sheet No. 1. Will you note from this account No. 9, sheet 1, that December 31, 1903, the sum of that account was transferred to construction account? A. General expense account closed into construction, December 31.

Q. I call your attention to account No. 9, sheet No. 1, to an item October 31, transferred from page 19 of the cash book evidently, which I show you, being book P-57. Will you look on that book and state if that item, \$81.33, was so transferred? A. 4419
I don't know what that entry means.

Q. There is an amount of \$81.33 on page 19.

Q. There is an amount of \$81.33 on page 19. A.
That is the footing of that expense account.

Q. Here you see that it is transferred to 9? A.
Posted to 9, yes.

Q. That means this account, No. 9, in your ledger; the same item appearing at page 33, which shows it was posted from page 19, does it not? A.
Yes, sir.

Q. That is the same item, is it not? A. There are a number of items there.

4420

R. S. Waddell—Cross

Q. I know, but that is the total that was transferred on that day to this general expense account?

A. It was posted, yes.

Q. And which, in turn, on December 31, was all transferred to your construction account, was it not? A. Yes.

Q. Therefore all those items went into the cost of your plant? A. General expense items, I should say so.

4421 Q. Among others I would like to call attention to these items.

Q. Do you recollect that you charged up the cigars and cigarettes that you used on the opening days there, to construction? A. No.

Q. There is an item of that sort there. Did that all go in? A. Expenses are charged to what?

Q. Expenses carried in your construction account.

Mr. Abbott: Where is it carried in construction?

4422

Q. It is just as I show you here on the items on sheet No. 1, December 31, 1903, construction account to close, taking over all of the items that had been charged up to your general expense to date? A. Yes.

Mr. Abbott: How much was charged to cigarettes?

Mr. Button: \$15.65.

The Witness: That was the entertainment we had on the opening day.

Q. Yes, and you charged the train you had to go out there? A. No, I don't recollect the items.

Q. Well, is it not a fact that it was your habit to put in this account you called construction account

a great many miscellaneous items of that character? A. We charged up to construction everything we expended during the time we built our mill. I stayed on the ground and superintended the mill, and therefore my salary should go in.

Q. Therefore your \$117,000 was practically an account of all your expenditures up to the time your mill was completed? A. Everything that enters into the construction of the mill, superintendence included.

Q. A little more than that, was it not. Everything you spent, you said a few moments ago, did you not? Do you recollect charging up attorney's fees in that account? A. No, no.

Q. Now, referring to this third wheel press, do you recollect buying a third wheel and press, motors, and so forth, and so on, in January, 1904, at an expense of \$6,800 and some dollars? A. I remember buying a press. I don't know when I bought the third wheel, but it was practically about that time. I bought of different people. I had to buy motors to drive them——

Q. Was not part of that machinery to replace this that had exploded? A. No, a wheel mill does not replace a press.

Q. Well, a press might have been injured? A. I had bought this horizontal press before the other one blew up.

Q. Do you mean you can have explosions without hurting the machinery at all? A. Yes, it never hurt our press at all.

Q. What was it that was damaged? A. I have had four or five explosions in wheel mills that only detained us fifteen or twenty minutes.

Q. What was the machinery that was damaged by the explosions in January, 1904? A. That was the cylinder of an upright press.

Q. Did it destroy it? A. It cracked it, yes.

Q. Did it destroy the buildings? A. Yes, not the foundations.

Q. And you went and bought a new press and rebuilt the building, did you not? A. No.

Q. Well, you rebuilt the building, did you not? A. No.

Q. Did you abandon the whole thing? A. Abandoned the whole thing.

4427 Q. What did you use in place of that one which was destroyed? A. I had to have a much larger foundation and altogether different for a horizontal press than a little upright press.

Q. Do you know whether you charged off the value of that building and the press that was destroyed from these accounts? A. I don't know; I could not put my finger on the items; I presume we did.

Q. Do you not know that you never made any credits whatsoever to either one of these accounts? A. I don't know anything about it.

4428 Q. From the beginning to the end? A. I don't know anything about the details of it.

Q. All you know, about the fact that your mill cost you in the aggregate approximately \$117,000, is that you add up the totals of these three or four accounts that have been mentioned; is that it? A. Yes; we had the judgment of two pretty good audit firms, Everett & Company, of Chicago, and De Loitte, Pledner, Griffith & Company, of New York. I think they knew their business.

Q. Do you recollect in December, 1903, charging up to construction your boiler insurance? A. No, I do not.

Q. That would not be a proper item of construction, would it, insurance on your boilers? A. If the boilers were run during the construction period

I should think it would be. They were certainly not for manufacturing purposes.

Q. Now, you cannot state at the present time how much the different items of machinery cost?

A. Not offhand.

Q. You purchased most of your original machinery under contract for a lump sum, did you not?

A. Most of it.

Q. The principal part of it? A. Well, we purchased our powder mill machinery from one concern and our electric machinery from the General Electric—

4430

Q. Was not the largest purchase from Baugher, Kurtz & Company originally? A. I don't know whether that was larger than our engines or not.

Q. Whatever it was you purchased that for a lump price, a contract price, did you not? A. Yes, and a whole lot of additions to it.

Q. And the contract price you recollect was carried on in your books without any detail; do you recollect that? A. I don't recollect that. Under the specifications they made a number of changes, I know, in the specifications.

4431

Q. You did not mean, in testifying in direct examination, that this plant cost \$117,000, that you could sit down and give the items that would aggregate that amount, did you? A. No; the items are on the books.

Q. That is what I mean. What you meant was that these various accounts that we are speaking of showed approximately that amount. Is not that what you meant? A. That is what we expended for the plant and stuff.

Q. In November you came to the time that you were going to sell powder that you had made. What trade did you expect to get at that date for that powder? A. What is that?

4432

R. S. Waddell—Cross

Q. What customers did you have in mind at that date to whom you expected to sell? A. We expected to sell all the trade that was open to be sold, that was not already tied up in contracts.

Q. And you have already said that you solicited it all, have you not? A. I did. I think I began soliciting about September or possibly a little earlier.

4433

Q. Have you not stated that there was enough new business, due to the development of the coal mines in Illinois alone each year during the existence of the Buckeye Powder Company, to take the output of your plant? A. In Illinois? No. I think I said in my territory. It was very largely made up of Illinois, but I do not think I made the statement that it was in that State alone. But there was a great increase every year in the production of coal in Illinois.

4434

Q. On page 2007 of this record, I read the following: The question was "Q. Now, what was the excess of tons of coal in the State of Illinois for which there was no immediate supply of powder at the time when your plant went into operation?" A. There was an increase every year in the amount of powder demanded to mine the increased amount of coal produced that would have required at least 250,000 kegs additional to take care of the new trade." Did you not so testify? A. Yes. I think that is correct, too.

Q. Well, that is not the fact, is it, that each year during the existence of the Buckeye Powder Company there was that increase in the consumption of powder in Illinois? A. I don't think that would be the excess in Illinois alone, but in my territory that was contiguous to my mills there was fully that.

Q. Possibly; but I understand your testimony to

be in regard to Illinois alone, and I understand you take your information from these coal reports, do you not, as to the consumption of powder in those states, or, rather, in Illinois? A. No, I do not take it from those. I knew it aside from the coal reports; but that confirmed me in some respects.

Q. I show you the report for 1910, at page 151, which purports to give the increased consumption of kegs of powder in Illinois from 1902 to 1909.

Q. This is a report that shows the increase from 1902 to 1909, and I would like to read this to you. The kegs of powder used were: In 1902, 637,448; in 1903, 806,311; in 1904, 923,418; in 1905, 928,500; in 1906 1,027,373; in 1907, 1,261,910; in 1908, 1,328,454; and in 1909, 1,280,607. Therefore from 1902 to 1903 there was an increase of a little over 170,000 kegs, according to these figures. A. You are reading from a statement from the State report where only about 70 per cent. of the mines in the State reported the amount of powder they used. That does not cover the field.

4436

Q. That would apply to each year, would it not? A. No; one year 60 per cent. and 80 per cent. in another year; and 70 per cent. is about the average.

Q. Do you mean to say that you have any information on the subject of the total consumption of powder in Illinois that is superior to this information and more accurate? A. I have not any general information that is superior to it, but I have had specific information that is better than that.

4437

Q. To the effect of what is the total consumption of powder in Illinois during those years? A. Not the total, no. I only know by the proportion—

Q. The proportion of what? A. I know that that does not give the exact amount of powder used by each mine.

4438

R. S. Waddell—Cross

Q. That may be; but how do you know, then, what the total consumption was in the State during those years? A. I know it by the tonnage of coal produced.

Q. Well, where do you get the tonnage of coal? A. We get it right in that book you have there, on the first few pages.

4439

Q. It is the same table, the next column, is it not? Is that what you refer to (indicating)? It first gives the number of kegs and the next column gives the number of tons produced. A. With those kegs.

Q. Yes. Is that what you refer to? A. Yes; the mines that report the kegs, report the tons of coal.

Q. Yes. A. But what I refer to as the tonnage of coal are these tables right in the start here (indicating). The total output of all mines in tons of 2,000 pounds, 48,758,853. In 1909 the figures were 49,163,710. That gives the tonnage. I can estimate on the tonnage of coal pretty closely what the tonnage of powder will be.

4440

Q. What page is that? A. Page 6. That gives the total tonnage, and then the output of shipping mines, and different classes of mines.

Q. That is the tonnage output of all mines in tons of 2,000 pounds? A. That is right.

Q. And for 1909 it was 49,163,710? A. Yes. That letter you read yesterday stated that when I left Wilmington it was 27,000,000 tons, about. It is up to 49,000,000 there in 1909.

Q. That is during a period of about seven or eight years? A. Yes; it doubled in six years, about.

Q. Then you would not tie up to this statement of the actual increase in kegs of powder? A. No, I would not swear to it.

Q. And it is true of the other reports in that record that have been put in, I take it? A. They are only a guide.

(The papers referred to were marked for identification A-209 and A-210.)

Q. If there was an increase, Mr. Waddell, it would be largely an increase in the production of mines that had theretofore opened, would it not?
A. No.

Q. Would it be confined to new mines? A. Not entirely, but the old mines, or some of them, were working out ever year.

Q. And extending, some of them? A. Well, old ones were abandoned, a good many of them, and new mines were coming on, and they were new companies. 4442

Q. Do you mean that it was your intention at that time to confine your efforts to getting business, to getting that new business entirely? A. No. After I read that letter in Cincinnati I was going to get any business that was open to me, at an equal price.

Q. At an equal price, you say? A. I would not dare cut the price, if I knew it.

Q. What is that? A. I would not dare cut the price if I knew it. 4443

Q. Then you didn't do it? A. Not if I knew it.

Q. Did you know their prices? A. Know the du Pont prices?

Q. Yes. A. No.

Q. In this Government case, page 188, did you testify as follows: "If they had the total control of the field and the furnishing of this vast amount of powder, which you have pictured to us, what field was it you were going to enter and not infringe upon theirs." To which you replied: "I expected to get the new business of Illinois alone, which would more than take the product of my mills"? A. Yes.

4441

R. S. Waddell—Cross

Q. Was that your intention? A. Yes, that is what I thought before I left Wilmington; I left there with that expectation.

Q. Confining yourself to Illinois and to the new business? A. Oh, no; there was not any confining myself to Illinois.

Q. You said "I expected to get the new business of Illinois alone which would more than take the product of my mills," was that your intention in Illinois? A. No, no, sir.

4445

Q. You so testified, didn't you? A. I don't know whether that "alone" was in there or not; my intention was to get the trade of that district.

Q. According to this record, that is what you said on page 188. A. There is a whole lot of remarks I find in this record that are not right.

Q. On page 188 we find that.? A. I may have used the word, "alone," I don't know; my purpose was to get the trade of my territory out there that was contiguous to the mills where I manufactured the powder.

4446

Q. And the first trade you got was the trade of Mr. Brechnitz, wasn't it? A. Brechnitz—I don't know; I think he was one of the early ones.

Q. I show you this invoice which I have understood you to say shows the sale you made of powder—this is P-67, and invoice No. 1, an invoice to Mr. Brechnitz at \$1.15, isn't it? (Handing paper to witness.) A. \$1.15; that is right.

Q. How many kegs? A. 400.

Q. What was the du Pont price to Mr. Brechnitz at that date, November 4, 1903? A. I don't know.

Q. What was the Austin price to Mr. Brechnitz at that date? A. Austin?

Q. Yes. A. I don't think he ever bought any, I never knew it; I probably took Brechnitz's statement for what the price was.

Q. I show you an invoice which purports to be dated December 2, 1903, to Mr. Brechnitz for the sale of powder from the Explosives Supply Company. Are you familiar with invoices of that nature enough to state what that shows and to recognize the invoice? (Handing paper to witness.)

A. No; I never saw one of their invoices; I don't know whether—

Q. Now, after that first sale to Mr. Brechnitz, you partly made a contract with him, did you not, to sell him quite a large amount of powder? A. I don't know how soon after that it was, but I did make a contract with Brechnitz.

4448

Q. It was some time the next Spring, wasn't it? A. The contract is there in evidence; I don't know just when it was.

Q. Now, I show you invoice No. 5—No. 18 to Powers & Williams on these books—and ask you what price you were charging that concern in your first sales to them, they are contained in there, dated November 13, 1903, evidently covering 260 kegs. What was your price to Powers & Williams? A. Well, I would have to figure that out. The price on this bill is \$1.20 net.

4449

Q. Well, this is your bill, isn't it? A. That is our bill.

Q. That is what you were charging Powers & Williams at that date, isn't it? A. Yes.

Q. Now, will you look at invoice No. 18 and then look in the same book and state what price that was sold at? A. \$1.20 net.

Q. Is not that \$1.15? A. After further examination \$960 and 800 kegs; no, I don't believe it is—eight times twelve is ninety-six.

Q. Is not there something on one of those vouchers to indicate the price was \$1.15? A. No.

Q. May I see it? (Handing Counsel.) Do you

4450

R. S. Waddell—Cross

know what the du Pont price was to Powers & Williams at that date? A. I didn't sell them.

Q. Are you sure of that? A. Powers & Williams were buying from Indiana.

Q. Indiana? A. From the Indiana Powder Company.

Q. Do you know what the Indiana price was? A. I think I had to rebate down to meet the Indiana price. If you will look at Powers & Williams' letters to me you will see.

4451

Q. My question is do you know what the Indiana price was at this date? A. A little higher than the Indiana price—

Q. Do you know what the Indiana price was? A. Whatever the books show. I had to rebate down to this Indiana price.

4452

Q. Here is your voucher (handing witness). What do you mean by that statement? There is No. 5, showing a rebate of 15 cents a keg from \$1.35, making \$1.20 on your first sale on November 13, 1903, to Messrs. Powers & Williams. Now, there is your book (indicating). Now, state from that what the price of the Indiana Powder to Powers & Williams was on that date if you can. Can you state from the books, Mr. Waddell? A. No; I didn't keep the Indiana accounts in my books. Indiana price was \$1.10.

Q. How do you know? I say, how do you know? A. I knew what the special price was.

Q. Got it from Mr. Moxham's list of contracts? A. No.

Q. What did you get it from? A. I got it from that list of the special prices that Rob put in here.

Q. You had that before you at this date? A. Yes.

Q. Won't you take that same book of vouchers and see what you then sold the Maplewood Coal Company, what price? I think you will find it in

voucher No. 6 or invoice No. 6. A. (After examination) \$1.10 net.

Q. Now, I show you a contract that has been introduced in evidence, 1246 for identification, sub-No. 255, and seems to be between the du Pont Company and the Maplewood Coal Company under date of May 1, 1903, and ask you to state what the price in that contract is. A. It is November, 1903.

Q. Your sale was at \$1.10 here on November 17, 1903, was it not? A. Yes.

Q. Now, what is the price in that three-year contract dated May 1, 1903? A. The price named here is \$1.35 a keg. 4454

Q. With how much rebate? A. 17 1-2 cents.

Q. That would make it \$1.17 1-2, wouldn't it? A. As of the date this was made, May 17, 1903, but you may have increased the rebate between that and the time of this.

Q. Possibly. Do you know anything about it? A. I know you were increasing the rebates.

Q. Do you know anything about the increase of rebates on this Maplewood Coal Contract which I have referred to? A. Yes, I know—— 4455

Q. At that date? A. I know you did increase the rebate to them.

Q. When? A. During 1903 while I was building the mill.

Q. When? A. I don't recall just the date in 1903; you increased the rebate to nearly all the trade around Peoria.

Q. To what point was the rebate to this concern, the Maplewood Coal Company, increased during 1903? A. I don't recollect the figures exactly.

Q. Then this Maplewood Coal Company was a concern in which you had a stockholder, was it not? A. Yes, they bought stock.

4456

R. S. Waddell—Cross

Q. Who was the stockholder? A. McElwee and Ditewig.

Q. Did they both have stock or take it as a concern? A. Both had stock, equal amounts, individually.

Q. When did they acquire that stock? A. I think it was along in the winter of 1903 they came and solicited it, they came in my office and I sold it to them, part of my own stock.

4457

Q. Then at that time they were under contract with the du Pont Company, were they not? A. I don't know.

Q. For three years? A. I don't know whether they were—that contract there would indicate it.

Q. I thought you just testified that the rebate on this particular contract was reduced during the year 1903, did not you? A. Yes.

4458

Q. Then you did know that they had a contract during 1903, didn't you, with the du Pont Company? A. Yes, but I didn't know that they had it at the time that they bought this 100 kegs of me; I don't know what time that was.

Q. Now, you say, if this contract is correct which you have introduced, that is correct, isn't it, it is dated May 1, 1903? A. Yes, sir, that is the date of the contract.

Q. And if that is correct, it stands proven that you sold them some powder at the time that they had a contract? A. I sold the powder, I think, in November.

Q. Yes, but you sold it on that date and then you sold them some right along later, didn't you? Didn't you sell them some in December, 1904, and right on in May, 1905, more or less, don't you remember? A. I don't recollect what the items were; I sold them very little powder, I know.

Q. That is a concern about which you gave cer-

tain testimony to the effect that you went down there and had an interview with the Pit Committee, wasn't it? A. I don't recollect testifying in regard to the Pit Committee.

Q. Didn't you testify that you went down to the mines? A. I went to the mines.

Q. Of the Maplewood Coal Company, and that they were a stockholder, and that they ordered some powder, and then the Pit Committee notified these people in your presence that they didn't want Buckeye powder; didn't you so testify? A. Some gentlemen notified them and they would not take any more of the powder.

4460

Q. You testified that it was the Pit Committee that came in while you were there and said they would not have Buckeye powder? A. I don't know what I testified to; that is the fact.

Q. You recollect about it. A. That is the fact; they did come in while I was there and say they didn't want it.

Q. And that is during the time that these people, the Maplewood Coal Company, was under contract with the du Pont Company to take all of their powder, wasn't it? A. I don't know about that; I don't know when it was.

4461

Q. And after you had sold them at \$1.10 in November? A. I can't tell you when I visited the Maplewood. You say I sold them from 1903 to 1905, it may have been anywhere between there; I remember being at the mines.

Q. Don't you remember selling them during that winter and the next year, a stockholder of yours? A. I sold them, I think, a hundred kegs. They used about 24,000 kegs a year, between 22,000 and 24,000 kegs; and I think I sold them a little less than 1,000 kegs all the time.

Q. Where was the Petersburg Coal Mining Com-

4462

R. S. Waddell—Cross

pany? A. Petersburg Coal Mining Company? I should think it was at Petersburg, Illinois.

Q. Do you know what price the du Pont Company was selling the Petersburg concern powder for? A. No.

Q. Well, will you look at voucher No.—or invoice No. 63 there in your book, and see what you sold them for—invoice No. 8? A. No. 8?

Q. Yes. A. I sold at \$1.17½.

4463

Q. And you say you don't know what the du Pont price was at that date? A. No; I don't.

Q. And where were they located? A. Petersburg, Illinois.

Q. Now, the Northwestern Coal and Mining Company is a concern that you sold a large amount of powder to, isn't it? A. Bevier, Missouri.

Q. You again have sold to them according to the invoice No. 9 there at \$1.05 delivered? A. No.

Q. How much? A. Instead of \$1.05 it should be \$1.20. \$480 for 400 kegs.

4464

Q. Rebate of 25 cents, that means \$1.10? A. No, the price was \$1.45 in Missouri.

Q. This was west of the river, is that the idea? A. Yes, Missouri, \$1.45 in Missouri and 25 cents rebate makes \$1.20.

Q. What was your price to them? Who had been selling that concern before, do you know? A. I think it was Equitable.

Q. The Equitable? A. I believe so; I am not quite sure as to that.

Q. How long had this Northwestern Company been—do you know how long this Northwestern Company had been organized? A. No, I don't; I don't know their history.

Q. The Canton Union Coal Company. Will you look at invoice 13 and state what you began to sell them for? A. \$1.20.

Q. That was in December, 1903? A. December, 1903.

Q. Do you know what the du Pont price was to the Canton Union Coal Company at that date? A. My impression is that this was the first they bought. That was a company composed simply of four or five miners. They bought it in ten-keg lots, I think. They had a little leased mine.

Q. You did not know that the du Pont Company had a contract with them for three years at \$1.17? A. No; the Canton Company——

4466

Q. (Continuing) ——which has been offered in evidence here? A. I never heard of it.

Q. I want you to look at this. It is No. 1720. It is dated August 1, 1903. A. (After examination) This is another proposition entirely. This is Simmons.

Q. What is the difference? This is the Canton Union Coal Company, is it not? A. Yes, and the other Canton Union Company was five miners that went together in a union mine and this is Simmons, the Simmons concern, up north.

Q. Two different concerns? A. Yes.

4467

Q. The other concern was the Canton Coal Company, was it not? A. What is that?

Q. There were two; one was called the Canton Union and the other the Canton Coal Company? A. No; there is still another one. That is the Canton Coal Company, and then there is a different company up north about three miles, and then this one right in the city of Canton.

Q. You say there is a third one? A. There seems to be a second Canton Union Company.

Q. Do you think there were two Canton Unions? A. I think there were at that time. I did not sell Simmons at that time.

Q. You did not sell Simmons at that time, but

4468

R. S. Waddell—Cross

besides the concern you were serving—— A. There were four or five miners.

Q. Can you not remember the names of any of them? A. No, I cannot; they were just coal miners.

Q. Now, about Applegate and Lewis, you have testified you sold them. Now, will you look at your voucher or invoice No. 14 and state what you began to sell them powder for on December 1, 1903—No. 14? A. This seems to have been originally invoiced at \$1.35 less 15 cents, and then changed to less 20 cents rebate, that would be——

4469

Q. \$1.15? A. \$1.15 net.

Q. Look at No. 24, December 19, 1903, and state what the price shown by that invoice is? A. Well, this is corrected in the same way; that is, \$1.35 less a rebate of 20 cents.

Q. Well, take the next month, January, 14, 1904, No. 34, and state what the price is. A. That is 20 cents rebate.

Q. Now, I show you—— A. \$1.15 a keg.

4470

Q. I show you Plaintiff's Exhibit 676 and ask you if you knew they were under contract with the du Pont Company, dated August 1, 1903, for three years and at what price (handing paper to witness)? A. No; I never knew anything about the contract.

Q. Did you know anything about the price in there, which shows \$1.20, does it not? A. \$1.25 a keg.

Q. Less 15 cents? A. Oh, yes, 15—that is, \$1.20, provided you haven't increased your rebate; I don't know whether you have done that or not.

Q. Well, now, Applegate & Lewis were located in Peoria, weren't they? A. No.

Q. Where were they located? A. Cuba, Illinois.

Q. How far away from Peoria? A. About 50 miles.

Q. They lived, Applegate & Lewis themselves lived in the city, in Peoria, didn't they? A. No.

Q. Where? A. They lived out at McKoopen, or some town of that kind, west of them.

Q. You knew them very well, did you not? A. I do not think I ever met Applegate & Lewis at that time personally; I may have met Mr. Applegate.

Q. You got quite well acquainted with them later? A. Yes, after they moved to Peoria.

Q. And when was that? A. I should think in about 1906.

Q. Consequently at that time—— A. Possibly 1905.

Q. Consequently, in 1903 and 1904, the fact that they were under contract with the du Pont Company did not prevent you selling them powder, did it? A. Yes, I think it did.

Q. You did sell them, didn't you? A. Something prevented me selling them that powder, it was all shipped back, nearly.

Q. You sold it to them, didn't you, at that time, those three vouchers or invoices? A. Yes; 25 kegs, but I think most of it came back.

Q. Now, where were the A. Rentz & Brother located? A. Rentz & Brother were adjoining my mills, directly adjoining west.

Q. What price did you begin to charge them for powder in December, 1903? Look at invoice No. 15 and state. A. \$1.17½ net.

Q. Did you know at that date they were under a three-year contract with the du Pont Company at \$1.25? A. No.

Q. Well, I show you contract—— A. This is f. o. b. mills, this price.

Q. Where were they located? A. About a mile above my plant; they came down with their own wagon and got it.

4474

R. S. Waddell—Cross

Q. Is there anything on this invoice to indicate that? A. No.

Q. No. 15? A. No.

Q. They would drive down after it, you say? A. Yes.

4475

Q. I show you this contract, which is Plaintiff's Exhibit 1503, I should think. That shows that the du Pont Company was under a contract dated August 1, 1903, for three years at a price of \$1.25, wasn't it? Is that right (handing witness)? A. This "cancelled" on the contract, does that mean anything?

Q. That means it came to an end three years later. According to this, that was the situation, wasn't it? A. I don't know what their price was.

Q. You didn't know the price? A. They may have increased their rebate.

Q. Now, won't you follow that? I wish you would confine yourself to the knowledge you have. Of course, a great many things may have happened, Mr. Waddell. Do you know anything about it?

4476

A. I know you did increase rebates to nearly everybody around Peoria during that year while I was building my plant.

Q. How much did we increase it to Rentz? A. I don't know.

Q. You don't know? A. I could not tell you the exact amount.

Q. Now, then, will you look at vouchers 22, 23 and 24 and see if you kept the same mines in December? A. Yes.

Q. 25, at the same price, weren't they? A. Yes, \$1.17½.

Q. Is that right? A. 25, yes.

Q. 35 in January, 1904. A. I took my pay in coal—\$1.17½ right.

Q. No. 51 and 52 in March, 1904, same price. A. Same price.

Q. The next, 59 and 63, in April, 1904. A. Same price.

Q. And No. 74 in May, 1904. A. Same price.

Q. How much would it cost to deliver powder down to their mines by wagon? A. I didn't deliver it.

Q. Well, I know they came after it. How much was that worth? A. Oh, it would take about an hour to come down, I guess, say eight—about 40 cents a hundred kegs.

4478

Q. Three or four cents a keg? A. Half a cent a keg—one-third of a cent a keg.

Q. The Central Coal Mining Company was located where, No. 17 invoice? A. 17?

Q. Where were they located? A. It is No. 16.

Q. 16, is it? A. That was shipped—

Q. December 1, 1903. A. Yes, this was shipped to Bryant, Illinois.

Q. What is the price? A. \$1.10 net on the contract.

Q. You had a contract with them? A. I had a contract with them.

4479

Q. Who was running that concern? A. Mr. Pierce.

Q. This is the same concern that we had a letter about a while ago, wasn't it, that you wrote to Mr. Pierce? A. Yes, I—you showed me a form of contract that I left in his office providing for \$1.17½; and when he signed the contract he didn't sign that paper, he just wrote me a letter contract.

Q. That is as you recollect it? A. And he made the price \$1.10.

Q. That letter was August 10th or 16th, I have forgotten which, 1903, wasn't it, Mr. Waddell? A. No; just before we started the mill.

Q. Are you aware that Mr. Pierce was under contract with the du Pont Company under date of July 15, 1903? A. No.

4480

R. S. Waddell—Cross

Q. To buy in carload lots all the black powder that he required? A. For what point?

Q. Bryant, Illinois; Kewanee, Illinois; St. David, Illinois; Edwards Station, Illinois. A. No, sir, I didn't know anything about it.

Q. You didn't know that along in July 15, 1903? Well, I show you Plaintiff's Exhibit 729, being what purports to be a contract of that sort, or contracts at \$1.17½, and ask you if it so states? A. That is the price on that, yes.

4481

Q. Now, where is the contract which you made with him which don't seem to be among the contracts that you produced? A. I found it among the letters in the letter files.

Q. Have you got it here? A. Mr. Abbott has it, I guess.

Q. Where was East Bryant, Fulton County, Illinois? A. That was down below Dunfermline.

Q. That was to the extent of one-half of their actual requirements at East Bryant, Fulton County, Illinois, wasn't it? A. Yes, I think that was.

4482

Q. And the price was to be \$1.10 f. o. b. C. B. & Q. tracks at your mills? A. At my mills; and the freight on it would bring it up to \$1.17½.

Q. You are sure that was the freight? A. Yes, later I got a 16-cent freight rate down there.

Q. That would be 4 cents? A. A little more than that, 4¾; and later I got a 15-cent rate in there. At that time it was too close on to \$1.17½.

Q. Well, is there any difference between East Bryant and Bryant? A. Yes.

Q. Illinois? A. Yes.

Q. This was a different mine you were furnishing, was it? A. Yes; one was a good ways below the other, but the East Bryant quit very soon, they did not operate very long.

Q. Your voucher to that concern, or your invoice

No. 16 or 17 there, whatever it is, that shows about —how much you got? A. 16 was \$1.10 and that was under that contract.

Q. Very well. But you had reduced it then at this time, December 1, 1903, to \$1.10 delivered, hadn't you? A. No; not delivered.

Q. This states shipped to Bryant, Illinois, rebate 25 cents per keg. A. It don't say delivered though.

Q. Well, don't you think those words "shipped to Bryant, Illinois," meant that you were paying the freight? A. That is where we sent it. 4484

Q. Your books will show, won't they, whether you paid the freight or whether he did? A. I don't know what the books will show, that is what the contract calls for f.o.b. mills.

Q. Where was the Clark Coal & Coke Company located? A. Peoria, Illinois.

Q. Did you sell them some powder? A. A few kegs.

Q. Do you recollect the price you charged in December, 1903? A. No, I do not.

Q. Do you know what price the du Pont Company was charging that concern prior to that time? A. No. 4485

Q. Will you kindly look at invoice No. 19 and state what price you charged in December (handing book to witness)? A. \$1.10 net.

Q. And No. 54, see if you sold them in March, 1904, at the same price. A. 100 kegs, same price.

Q. I show you invoice No. 354 and I ask you in November, 1904, if you sold at the same price (handing another book to witness)? A. I don't know what this is I can't read these figures, it might be deciphered by the use of another book, but I cannot read those

Q. I took it to be—isn't it \$1.10? A. That is the total amount of the bill; I don't know how many kegs there are.

4486

R. S. Waddell—Cross

Q. Sixty and forty? No matter, we can supply it on some other book. A. The ledger will determine where it was posted.

Q. Will you look at that contract (handing paper to witness)? Were you aware that the du Pont Company had a contract with that concern dated August 1, 1903, for three years for all their requirements? A. Dated August 1, 1903?

4487

Q. Isn't it? A. The only contracts I knew about were the contracts named in the Moxham list, and that was made up in the fall of 1902; I never knew anything about any other contract except as I was told by the customers and given the price by the customer.

Q. This is plaintiff's exhibit 731 and indicates, does it not, that the du Pont Company had a three-year contract for all their requirements at \$1.20? A. Appears to be a copy of a contract. There are no signatures to it. Fifteen cents rebate from \$1.35 is named in the contract—August 1, 1903. I would not know anything about those contracts, that was a year after I left there.

4488

Q. August, 1903—that is about six months after you left, was it not? Now do you recollect selling powder to the Missouri & Illinois Coal Company? A. I think we sold them powder, but I don't know whether we sold them that direct, probably through the Willis Coal Mining Company.

Q. Where were they located? A. Their office was in St. Louis, their mine—

Q. Do you know the price the du Pont Company was charging that concern prior to your sales? A. No, I do not know.

Q. Will you look at that invoice No. 30 and state whether you sold that concern in January, 1904, at \$1.15 delivered? A. 50 kegs at \$1.15.

Q. Will you also look at invoice No. —? A.

I don't know that that was delivered, nothing on the invoice to indicate that it was delivered.

Q. Well, look at invoice No. 46 and see if you sold them 400 kegs in March, 1904, at that price?

A. At \$1.15, carload, yes.

Q. Does that indicate whether it was delivered or not? A. No, it does not say on the bill.

Q. I show you the account in the ledger of the Missouri & Illinois Coal Company, being on sheet No. 1, account No. 101, first item on the credit side under date of January 30, 1904, freight on 50 kegs \$9.36. A. 400— and 800 credited with the freight. 4490

Q. Therefore it was delivered, the first shipment, was it not? A. Yes, that is right.

Q. Now if you will look at another invoice there, No. 53, and state whether you sold them an 800 keg lot in March, 1904, at that price? A. \$1.15.

Q. I show you exhibit 869 and ask you if you knew anything about a contract for three years that the du Pont Company had at \$1.17½ with that concern (handing paper to witness)? A. Well, this was made August 25, 1903, and appears to be a copy at 17½ cents rebate from \$1.35—\$1.17½. 4491

Q. You knew nothing about that price then? A. No, I didn't know anything about the contract, it was a year after I left there.

Q. In reference to Chas. Devlin, where was he located? A. Chas. Devlin?

Q. Chas. J. Devlin? A. He was president of some coal company in Kansas.

Q. Offices at Topeka, Kansas? A. Mr. Miller sold him, I don't know where his offices were.

Q. Will you look at that invoice No. 109 and state what you charged Mr. Devlin in July, 1904? A. July, 1904—\$1.05.

Q. 1,000 kegs? A. 1,000 kegs.

Q. And invoice No. 148, 800 kegs, July 29, 1904? A. That was 800 kegs at \$1.10.

4492

R. S. Waddell—Cross

Q. Now, voucher No. 174, will you find that?
A. 1,000 kegs at \$1.05.

Q. And voucher 325 in November, 1904, the invoice No. 325, it is in this book (handing another book to witness). What was that price? A. It is \$1.15, November 2, 1904, and delivered at Pekin, Illinois, that is right by Peoria; I should judge that those other carloads that you mentioned of Devlin's were all delivered at the mill, f.o.b. mills.

4493

Q. Why should you judge that? A. The fact that this is prepaid to Pekin, which is only about ten miles from Peoria.

Q. No. 340, do you find a voucher there or invoice? A. It is \$1.15 delivered at Pekin.

Q. Don't you remember the fact that that was further rebated down to \$1.05 through your journal and ledger? A. I don't recollect it now, it may have been.

Q. That is dated November 9, 1904. A. November 9, 1904.

4494

Q. On December, 1904, on this tissue invoice book (handing another book to witness), did you sell him, the middle one there (indicating) December 6, 1904, 1,000 kegs? A. Yes, that is f.o.b. Pekin.

Q. What is the price? A. \$1.05 mill delivered.

Q. Now on page 11 of the same tissue copy book did you sell him 1,000 kegs delivered at Pekin at \$1.05? A. \$1.05 that is right.

Q. Now on page 18 of the same book in January, 1905, did you sell him 2,000 kegs at the same price? A. Same price, 2,000 kegs, that is mill delivery also.

Q. Do you know what the du Pont price was to Mr. Devlin? A. No, I did not come in contact with him.

Q. Do you know whether he had a contract with

the du Ponts or not? A. If it was on the Moxham list I knew it, if it was not, I didn't.

Q. At the present time you don't know? A. No.

Q. Now the Phillips Fuel Company, Ottumwa, Iowa, you sold them? A. Yes, we sold them powder.

Q. Do you recollect what price you charged them? A. No.

Q. I will leave that for a moment and go on to W. S. Norton, Weir City, Kansas; will you look at your invoice No. 62 and state what particular price you sold him at? A. I sold him 800 kegs at \$1.30.

4496

Q. Now will you look in your tissue copy book there on page 24 and see if you sold them a thousand kegs on January 13, 1905, at \$1.20? A. A thousand kegs at \$1.20, January 13, 1905.

Q. Did you know the du Pont price in that instance A. No.

Q. Well, I show you plaintiff's exhibit 987, contract dated December, 1903, between the Laffin & Rand Company and Mr. Norton, did you know the Laffin & Rand price? A. No, I did not know any of them.

4497

Q. This is No. 987; will you state whether or not that contract indicates that the Laffin & Rand were furnishing powder at \$1.35 delivered to that concern under a three-year contract? A. This contract is signed W. S. Norton; my sale was to the Norton Coal Company; I don't know whether they are the same or not.

Q. What is the location of the operations from the contract? A. I sold to Weir City, Kansas, and the locations were—his contract called for Weir and Scammon, Kansas.

Q. Did you know Mr. Morton? A. Never met him, no; I don't know him; I think this was sold by a letter.

4498

R. S. Waddell—Cross

Q. By Mr. Miller? A. No, I believe I sold that myself by a letter; I will look it up and see.

Q. Do you know two W. S. Nortons down there?

A. I don't know either of them or any one by that name personally?

Q. Don't you recollect in regard to the Phillips Fuel Company that that was one of the instances that some witness was examined about in which there was an invoice in your book at \$1.35 and certain rebates carried to the journal and ledger, bringing it down to \$1.15? A. No, I don't remember that.

Q. Well, do you know what the price of the du Pont Company was to the Phillips Fuel Company in 1903 and 1904? A. No.

Q. You don't. Now the Collier Co-operative Coal Company, where were they located? A. I do know what Mr. Phillips told us the du Pont price was.

Q. You know what? A. I know what Mr. Phillips told us the du Pont price was and we had to rebate down to it.

Q. That business was done through Mr. Miller, wasn't it? A. Yes.

Q. Right there won't you tell us what your arrangement with Mr. Miller was, Mr. Waddell, how did you pay him? A. We gave him a net price f.o.b. the mills.

Q. What was that price? A. Well, that varied, it started in on small lots, I think \$1.25 on small lots, and I think we started in on carloads at \$1.15 and he made all he could make above that.

Q. Was he responsible for collections? A. No, we took the accounts.

Q. Did you pay the freight and all other charges? A. Well, that depended upon whether it was f.o.b. mills or whether it was delivered; if it was carloads delivered we paid freight.

Q. You made him a net price at the mills; what was the lowest net price at the mills that you made to Mr. Miller at any time? A. I think after we got down to \$1.00 that he never charged us anything after that.

Q. Well, my question is what was the lowest net price at the mills, Mr. Waddell, that you made to Mr. Miller? This calls for dollars and cents, Mr. Waddell. A. I don't recollect dollars and cents.

Q. Very good; didn't you get down to selling Mr. Miller at ninety-one cents at the mill? A. Whatever he had to sell at when it got below a certain price Mr. Miller sold at cost.

Q. Well, you recollect you got down to selling him at that price and less, didn't you? A. I don't know; I can't recollect the figure in thousands of accounts.

Q. Now will you look at the invoice on page 82 of the tissue copy book there and state what you sold the Collier Co-operative Coal Company for? A. Co-operative, Collier Coal Company, Peoria, Illinois, 10 kegs at \$1.10 delivered.

Q. And further in December, 1906, on this other book? A. That was in April, 1905, that sale to Collier Co-operative, April 10, 1905.

Q. I show you this sales book under date of December 13, 1906, the book being marked P69 (handing book to witness), and ask you if you can state the price to the Collier Co-operative at that date? A. (After examination) It is December, 1906, 100 kegs, 95c.

Q. Now do you know the price that the du Pont Company was charging the Collier Co-operative Company in 1903 and 1904? A. No, only by the—

Q. And did you know that they had a contract? A. No, I didn't know anything about it, unless it was on the Moxham list.

4504

R. S. Waddell—Cross

Q. Well, now I show you plaintiff's exhibit 1246, sub. No. 8, dated May 1, 1903, for three years, and ask you if that was not a contract at \$1.35 a keg delivered, or rather \$1.20 I think it is, rebate of fifteen cents? A. \$1.20, yes, \$1.35, and a rebate of fifteen cents.

Q. \$1.20 net? A. \$1.20 net, May 1, 1903, is the date of the contract.

Q. For three years, isn't it? A. For three years.

4505

Q. Now do you recollect the Greenville Coal & Mining Company—or Greenview? A. I remember Greenview.

Q. Where was that concern located? A. Greenview, Illinois.

Q. Now will you look on that sales book you have in your hands on page 11, under date of September 28, 1906, and state what price you were charging that concern, invoice No. 294, possibly you can find it easier from the copy of your invoice of September 28, 1906. A. 300 kegs at 98c.

Q. That is delivered? A. F.o.b. Greenview.

4506

Q. Now will you look at Invoice No. 323 in that same volume and see if you sold them further on October, 1906, at the same price? A. 100 kegs, 98 cents, f.o.b. Greenview.

Q. Will you look at No. 356—— A. That is October 10, 1909.

Q. Will you look at No. 356 and state if you were selling them more that same month at the same price? A. That was 200 kegs October 23, 1906, at 98 cents, and 150 kegs to Manchester at the same time.

Q. Now invoice No. 381 to the same customer in November, was that at the same price, 400 kegs? A. 400 kegs, November 16, 1906, at 98 cents f.o.b. Greenview.

Q. Now do you know the price that the du Pont

Company was charging to the Greenview Coal and Mining Company in 1903? A. No.

Q. Or in 1906? A. I should think 95 cents, that would be the price that they were making in Illinois at that time.

Q. Now the Manufacturers' Coal & Coke Company, Chicago, Ill. Will you look in that first book of invoices under date of November 17, 1904, I have not the number, it is November, 1903. A. I don't think I sold them in 1903 (examining book).

Q. It may be in 1904. Never mind, I will have that checked up. Will you look on that tissue copy book, page 158, and state what you were selling that concern, the Manufacturers' Coal & Coke Company at, in August, 1905? A. Carloads, 750 kegs at \$1.10 delivered.

4508

Q. And on page 171, same month. A. That is August 29, 1905, the date of that other.

Q. Yes. A. That was August 29, 1905—

A. At what price? A. 750 kegs at \$1.10 delivered.

Q. Now on page 193 of the same book, in the next month. A. That was a temporary supply on a carload order of 1,000 kegs; 100 kegs at \$1.10, September 30, 1905.

4509

Q. Now, do you know what price the du Pont Company was charging the Manufacturers' Coal & Coke Company at that date? A. No.

Q. Do you know whether they had a contract? A. No.

Q. I show you Plaintiff's Exhibit 1246, sub-number 61, and ask you if that is a contract for three years with this concern, dated the 16th day of January, 1902, and at what price (handing paper to witness)? A. That was in January, 1902, I had a list of it on Moxham's list.

Q. What is the price on that contract? A. (After

4510

R. S. Waddell—Cross

examination) : \$1.35 is written in at Novinger, Missouri, and a rebate of 10 cents.

Q. That would be \$1.25 net according to that?

A. Net, yes, that price was changed.

Q. When was that price changed? A. December 19, 1902.

Q. Well, this contract is dated January, 1902. Now to what price was it changed on December 19, 1902? A. Well, all prices were advanced 10 cents a keg by the December 19th meeting, and those contracts that were called advanceable went up except those that could not be advanced. Those stayed at the old price, but this I can——

4511

Q. Was this one advanced? A. I don't know.

Q. I thought you stated it was. A. I stated the price was advanced, and I think probably that is an advanceable contract, the way I read it, and if so he changed it.

Q. As a matter of fact, you don't know anything about whether the price to this particular customer was advanced in 1902 or not, do you? A. No, I would judge that you had another contract which is not here.

4512

Q. What is that? A. I would judge you had another contract with that party that is not here, that you haven't shown me.

Q. Yes, there are several more right here in evidence. A. With the same party?

Q. With the same concern, they are all in evidence. Now to go back to Mr. Devlin. Do you know that they had a contract with him which is Plaintiff's Exhibit 984, dated October 7, 1903, for two years (handing paper to witness)? A. No, I don't know anything about that contract.

Q. And what price is that contract? A. \$1.15 delivered at Frontenac, in Chicopee, Kansas, October 7, 1903, and October 6, 1903, I don't know.

Q. And according to your voucher No. 109 which you referred to, you were selling him carloads in July, 1904, delivered at Frontenac, Kansas, at \$1.05, weren't you, despite this contract? A. No, we were not delivering it at Frontenac, Kansas.

Q. Look at your voucher No. 109. A. We were delivering at the mills as I recollect these invoices.

Q. Look at 109. A. That would be higher than this price.

Q. F.o.b. Pekin, where is Pekin? A. That is right close to our mills, that is ten miles, that is the junction of the Santa Fe and that was delivered right at our mills. 4514

Q. \$1.05 is not that it? A. Yes, and the freight on it out there would be 80 cents, about 20 cents a keg, that would cost \$1.25 out there as against your \$1.15 price.

Q. Do you know from what mill of the du Pont Company deliveries were made to this customer in Kansas? A. No, I don't.

Q. Probably from one of the two Kansas mills it would be naturally? A. I should think so, it would be the proper way to make it. 4515

Q. Now, do you recollect the Prussia Hardware Company, Fort Dodge? A. I don't remember them.

Q. Well, are those two letters, Defendants' Exhibits A and B, signed by Mr. Miller (handing papers to witness)? A. It is Mr. Miller's signature, yes.

Mr. Button: I offer those two letters.

(Same received in evidence and marked Defendants' Exhibits A-355 and A-356.)

Q. Do you know what price the du Pont Company was charging the Prussia Hardware Company at that date? A. No.

4516

R. S. Waddell—Cross

Q. August, 1904? A. No.

Mr. Button: This is a letter to the Prussia Hardware Company:

"Chicago, Ill., August 25, 1904.

Prussia Hardware Company,
Fort Dodge, Iowa.

4517

Gentlemen: Your favor of August 23d received. I am pleased to quote you following prices f.o.b. cars Fort Dodge, Iowa, as follows:

400 kegs Buckeye Blasting Powder, \$1.30 per keg.

800 kegs Buckeye Blasting Powder, \$1.25 per keg.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice.

4518

Kindly favor me with your order. Also, when you are in need of further supply of Dynamite, Blasting Supplies or Tee Rail Spikes, will you kindly give me an opportunity to figure with you on your orders and place me under many obligations to you.

Awaiting your reply, I am,

Yours very truly,

(Signed) J. G. Miller."

Mr. Abbott: What exhibit is that, Mr. Button?

Mr. Button: That was Exhibit No. A-356. A-355 is:

R. S. Waddell—Cross

4519

"Chicago, Ill., Sept. 9, 1904.

Prussia Hardware Co.,
Fort Dodge, Iowa.

Gentlemen: Your favor of September 7th received. I am very anxious to secure your orders for Powder and you need have no hesitancy in putting in stock of Buckeye Powder, for the reason that it is equal to any on the market, if not better. If the Powder does not give satisfaction to your customers, I am perfectly to move it elsewhere as there is a demand for this powder and it has not been thrown out any place we have shipped it. I will make you price on Black Blasting Powder, f.o.b. Fort Dodge, Ia., as follows:

Carloads, 400 kegs, \$1.25 per keg.

Carloads, 800 kegs, \$1.20 per keg.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice.

I will wire you price on mixed carload 8-lb. and 12-lb. rails tomorrow.

The Buckeye Powder Mills are equipped with the latest machipery only; the best ingredients are used only, and the mills are equipped with experienced powder makers; consequently, the output is strictly first-class in every particular.

Awaiting receipt of your order, I am,

Yours very truly,

(Signed) J. G. Miller."

Q. Now, do you know whether the du Pont Company had a contract with that concern on that date?

A. No, I do not know.

1507

4522

R. S. Waddell—Cross

Q. Now, the Big Creek Coal Company, Kewanee, Illinois. I show you an invoice dated April 18, 1905, and ask you if you sold them that powder (handing paper to witness)? A. April 18, 1905, 800 kegs at \$1 a keg. I presume that \$33 is the freight to St. Davids, Ill.

Mr. Button: I offer that invoice in evidence.

4523

Q. That is your company's invoice, isn't it, Mr. Waddell (handing witness)? A. It appears to be, yes, I should judge so.

(Same received in evidence and marked Defendants' Exhibit A-357.)

Q. I show you another invoice of the Buckeye Powder Company to the same concern dated June 3, 1905, and ask if that is the invoice of your company? A. 800 kegs at \$1.00 delivered.

4524

Q. Is that your invoice? A. June 3, 1905, our invoice.

Q. Is there a receipt for the payment on the first document signed by your son? A. Yes.

(Above invoices received in evidence and marked Defendant's Exhibits A-358 and A-359.)

Q. I show you another invoice dated July 18, 1906; is that an invoice of the Buckeye Powder Company to the same concern? A. July 18, 1906, 1,000 kegs, Big Creek Coal Company, St. David, at ninety cents.

Q. And is the first document the receipt for the bill? A. This is f.o.b. mills 90c, at the mills.

Q. Is the first yellow document a receipt of the

Buckeye Powder Company for payment? A. That is right. "F. S.," I guess that is a stenographer.

(Papers received in evidence and marked Defendant's Exhibits A-360 and A-361.)

Q. Now the Economic Coal Company, Danville, Illinois, is that your invoice of August 12th, 1904, and receipt for payment (handing witness)? A. Yes, but I don't understand that bill; my impression was that we had to ship that powder back because we had overcharged them; the books will show.

4526

Q. What does the invoice show? A. The invoice shows 800 kegs at \$1.05 delivered.

Q. And the receipt shows payment of that price, does it? A. Payment at that price, but I think we took a good part of the powder back; the Austin Powder Company had a lower price than we did there.

Mr. Button: I offer those in evidence.

(Papers marked Exhibits A-362 and A-363.)

4527

Q. What was the price of the Austin Powder Company that was lower? A. I don't recollect it now.

Q. Do you know that on May 2, 1904, the Austin Powder Company sold them 500 kegs of powder at \$1.17½? A. What date was that?

Q. May 2, 1904, your sale is August 2, 1904; do you know that fact? A. No, I don't.

Q. Do you know that the Austin Powder Company sold them on July 12, 1904, 800 kegs at \$1.10? A. No, I don't.

Q. Less than a month before your \$1.05 price? A. No.

4534

R. S. Waddell—Cross

Mr. Button: I offer that letter.

(Letter received in evidence as Exhibit A-366.)

Q. Do you know the du Pont price f.o.b. St. Paul at that date, February, 1907, to this concern? A. Well, they always quoted the price that they were named by the other people, we met it.

Q. Do you know the du Pont price at that time? A. No.

4535 Q. Do you know that they were charging the same concern \$1.15 f.o.b. St. Paul at that date? A. I don't think the du Ponts were selling them; my recollection is that our competitor there was the American Powder Mills.

Q. Do you know the price of the American? A. The American was below us generally; we had to rebate once or twice to meet it.

Q. This was handled by Mr. Miller, wasn't it? A. Yes.

4536 Q. How much did you have to rebate to meet the American? A. I don't recollect; my impression is—the books will indicate what it was.

Q. Then the American was competing with you for that trade at that date, was it? A. Yes—I don't know who our competitors were all together.

Q. Well, the American was competing at that date with you, wasn't it? A. I thought it was, yes.

Mr. Button (reading A-366):

"February 7, 1907.

W. A. Talmage, Esq.,
President W. A. Talmage Company,
Red Lodge, Montana.

Dear Sir:

Referring again to your letter of Feb. 1st to our Peoria Office:

I am pleased to quote you price of \$1.00 per keg f.o.b. St. Paul, on 1,000 kegs Black Blasting Powder, or I will accept your order for five or six carloads at 99c. per keg f.o.b. St. Paul, Minn.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice.

I note from your letter that you can control trade of one or two carloads per month, and hope that you will kindly favor us with your order. The above quotation certainly places you in position to do business as against any and all competition at Red Lodge. 4538

Awaiting your reply which I trust will be favorable, I am

Yours truly,
John G. Miller."

Q. You would rather judge from that that your price was lower than any one else's, wouldn't you, Mr. Waddell? A. No, no, the du Ponts were selling the Northern Pacific Railroad there at Red Lodge and Talmadge, a merchant, competed against them, and I presume Mr. Miller was giving him a price that would enable him to compete. 4539

Q. You don't know anything about it, do you? A. Well, I called on Talmadge after I sold out—I went out there representing Western after I had lost the trade and I heard a good deal about it.

Q. Do you know any price that the du Pont Company was making that concern at that date? A. No, du Pont prices were all secret; they didn't publish any price list.

Q. February 16, 1905, did you sell the Capital

4540

R. S. Waddell—Cross

Coal Company of Springfield, Illinois, at \$1.05 (handing letter)? A. Ten kegs at \$1.05, yes.

Q. And do you know the du Pont price to that concern at that date? A. That all came back to us; they didn't use any.

Q. Do you know the du Pont price at that date to that concern? A. 1905, I should judge 95c.

Q. Do you know the du Pont price to the Capital Coal Company at that date? A. I don't know the price.

4541

Mr. Button: I offer the voucher in evidence.

(Received in evidence and marked Exhibit A-367.)

Q. Now I show you three invoices dated August 1, 1905, August 29th and September 30th of 1905, to the Manufacturers' Coal & Coke Company which we have been over, but I would like to have you state if those are three of your original vouchers? A. August 1st, August 29th and September 30th, 1905.

4542

Q. Are those your invoices? A. Those are our invoices.

Mr. Button: I offer those three.

(Invoices received in evidence and marked Exhibits A-368, A-369 and A-370.)

Q. Going back to this Devlin account which you talked about, the expense of delivery in Kansas, I call your attention to an entry in your journal of March, 1905, in that account, the book being marked P62, page 135, and state whether you didn't reduce the price from \$1.05 to \$1.00 to Mr. Devlin (handing book)? A. Yes, we probably had to do so.

Q. What? A. Yes, we probably had to do so.

Q. Well, now I move to strike out the answer.

Did you do it or didn't you? A. Well, I don't know; that is the way it looks.

Q. Your books show that you did, doesn't it? A. Yes.

Q. Now you have stated, Mr. Waddell, that these prices of the du Pont Company were secret. Did you testify as follows in the Government case, page 244: "My mills began building in March, 1903, and I left their employ February second, 1903. Immediately after the location of my mills near Peoria, Illinois, all of the powder companies in the Association reduced their own prices of blasting powder, which they had fixed at one dollar and thirty-five cents in the State of Illinois, with rebates of ten and fifteen and as high as twenty cents per keg from the list of contracts, naming the lowest net price, one dollar and fifteen cents per keg. All brands of the associates were reduced to a flat price of one dollar and ten cents, irrespective of the quantity. Q. When you say all brands, what kind of powder do you mean? A. Du Pont, Hazard, Lafin & Rand, American, Miami, Equitable, Oriental and King. Q. Blasting or rifle powder? A. Blasting powders; blasting powders only. The price of rifle powder was never reduced in the State of Illinois during my continuance in business there. There was unusual activity by all of the companies immediately on the location of my plant, and during the eight or nine months it was building in making contracts at these reduced prices with all the trade in Illinois, Iowa, Michigan and Indiana that could be reached from my mills. This low, flat price, which was a cut of their own figures and prices, was confined to that district that would be reached by the Buckeye mills." Did you so testify? A. I did, and that is correct, that is the word that I got from the whole trade of Illinois.

4544

4545

Q. And yet you knew nothing about the prices of the du Pont Company and these other concerns were charging? A. No.

Q. As you have just testified? A. I knew what the trade told me the price was.

Q. You testified within ten minutes, that these prices were secret, didn't you, Mr. Waddell? A. Certainly they were.

Q. Did you or didn't you? A. You didn't publish a price list.

4547

Q. Do you mean to say now that these companies that were mentioned there made a \$1.10 price, flat price in the summer of 1903 whenever and wherever mills were located? A. Yes.

Q. They did? A. I mean there, I can point you out several of them that did it.

Q. Did they make a low flat price to every customer regardless of quantity at that time? A. I did not swear to every customer.

Q. You didn't? A. If I did, I didn't so intend it. No, they had a variety of prices.

4548

Q. Your testimony was: "All brands of the associates were reduced to flat price of \$1.10 irrespective of quantity." A. That is all brands—

Q. You testified further: "There was unusual activity by all of the companies immediately on the location of my plant and during the eight or nine months it was building and in making contracts at these reduced prices with all the trade in Illinois, Iowa, Michigan and Indiana that could be reached from my mills"; that was what you said? A. Yes; but I don't say every customer, I said on all brands.

Q. You did not say every customer, you said all of the trade. A. The du Ponts were not selling all of the trade.

Q. No, you did not confine it to the du Ponts.

This was powder of du Pont, Hazard, Laflin & Rand, American, Miami, Equitable, Oriental and King is what you said. A. Yes.

Q. Did you so testify at that time? A. Yes, I did, and that is exactly what I am stating now, they came down at that time to the low price of \$1.10 per keg on all brands.

Q. How about those contracts I have shown you here, many of them running up to \$1.20 and \$1.25 during that very period? During the summer of 1903?

4550

Q. During 1903. A. I don't know anything about the contracts.

Q. You don't know anything about these? At this date? But you didn't have very accurate knowledge on the subject, did you, Mr. Waddell? A. No, I had very full information from the trade everywhere.

Q. You either did or didn't, what is your present statement, that you did know these prices or you didn't know them? A. I knew the prices, yes, as I got them from the trade. I didn't get any price lists from du Pont people or any instructions from them.

4551

Q. I refer you to a statement you made in your direct examination on page 2090: "Concerning the matter of prices, Mr. Waddell, I want to ask you a question. What method did you follow during the years 1903 to 1908, in order to ascertain what were the ruling prices for black blasting powder with which you had to compete? A. The only prices that I know anything about were the prices that I had when I left Wilmington, Del., and were established by the Powder Association on the 19th day of December, 1902, \$1.25 east of the Mississippi River, and \$1.45 west of the Mississippi River." Did you so testify on your direct examination? A. That is the schedule price, yes.

4558

R. S. Waddell—Cross

ship this to us, that I might exchange it for fresh and satisfactory stock. He will do this as early as possible. In the meantime, I will ship you other Powder to replace it. Will also ask our Mr. Thos. Reynolds, ex-President of the Miners' Union of this State, to visit your mines and aid your men in the proper use of the Powder. If any should experience difficulty Mr. Reynolds can be of service to them.

4559

If you expect to visit your mines Tuesday or Wednesday of next week, and will wire me, I would like to call on you at St. David.

Wishing you success in the coal business, I remain,

Very truly yours,

BUCKEYE POWDER CO.,
R. S. Waddell, President."

4560

Q. This letter is dated August 12, 1904, about ten months after you had begun to manufacture powder, Mr. Waddell, and you stated here: "I spent that entire time trying to get that powder into proper shape." A. Ten months—oh, no.

Q. Didn't you so state in this letter to Mr. Pierce? A. Well, the shipment to Mr. Pierce was 100 kegs and the order was taken before my mills started.

Q. And it was the same 100 kegs— A. And that is to the Central Coal & Mining Company.

Q. And it was the same 100 kegs that you shipped him about Dec. 1, 1902, on the invoice which you produced here? A. Yes.

Q. The concern which you testified— A. I was writing him as to his letter in regard to that.

Q. Wait a moment— A. I didn't have any more from him under the contract.

Q. Wait a minute, won't you, Mr. Waddell, and let me finish my question. Which you testified about a week ago that you lost that business because the du Pont Company made a lower price to Mr. Pierce, didn't you so testify? A. That is what they did.

Q. You so testified, that was the reason you did not fulfil the contract and was notified of a lower price and cancelled the contract, didn't you so testify? A. They didn't take any more powder on the contract.

4562

Q. Didn't you so testify, that that was the reason of it? A. I don't recall my testimony, if I said that it is correct.

Q. I refer you to Volume 29, page 4695 of the record referring to the letter which you wrote to Mr. Pierce on August 26, 1903, which is in evidence. You said that that letter is written by Rob, your name, dictated, was R. S. W., signed Rob, "dictated by you? A. Yes, sir." And you stated on page 4098: "Yes, I got that contract, and it was cancelled because I would not meet the price, the price of the du Ponts. Q. And you found this customer to be one of those that were in Mr. Moxham's list which you had in your pocket which showed it was being furnished, not at \$1.17½ at that time, didn't you, but at \$1.20. You recall that? A. I don't know anything about that, this man, I forget the date, had just opened up at Bryant, Illinois." You so testified, didn't you? A. Yes, that is right.

4563

Q. Do you remember how much powder in your mill you dumped and reworked in the year 1906 because it was not fit? A. We filled our magazines full of powder and could not sell it and in time it would get so old that we would rework a part of it, I don't remember how many kegs.

Q. Do you remember you reworked 13,127 kegs

in 1906 as shown by your books? A. I don't, I don't remember how much. The chances are, we had accumulated a large grain, say 2-C or 3-C grain as all other powder mills in the world do, and when they get an unusual quantity of large grain, they run it in and break it down and rework it.

Q. There is not any question pending, Mr. Waddell? A. Yes, there is.

Q. What is it? A. You asked me if I worked this powder over.

4565 Q. I asked you if you remembered what your books showed on the subject. A. You inferred that it was an inferior powder.

Q. You need not answer my inferences, Mr. Waddell, your counsel will take care of you.

Q. On Book P-58, page 61, does your account show how much you reworked in 1906? A. Yes, but it don't show that we reworked it because it was bad quality or the fact that the powder was not a standard quality.

4566 Q. It shows it was reworked, doesn't it? A. It was breaking down the big grain, the big grains was broken down into the smaller grains, yes.

Q. And in 1907, how much? A. 5,365 kegs; probably for the same reason, we had accumulated a large grain and had to break it up into small.

Q. Do you recall that fact or not? A. I know we were constantly reworking over powder, every powder mill in the world does.

Q. That is on page 75 and says powder was "re-made, no new materials used," doesn't it, is not that entry on your books? A. Yes, certainly, there would not be any new materials used if we reworked the powder.

Q. It states there powder was remade, you mean by that simply changed over the size of the grain? A. No, done over and put under the wheel, broken down, the grain was broken down and made a fined

powder as powder is made and then pressed, grained and glazed.

Q. And practically made over? A. Well, that is done in every powder mill in the world, it is done every day, constantly reworking it; and those charges are thrown in—

Q. There is no question pending, Mr. Waddell. Now, you have spoken of some agents you had selling powder. Who was Mr. Corbin? A. Corbin—Steven Corbin, he was a miner in Michigan, Northern Michigan, Saginaw.

4568

Q. Can you state what relation he did have or had previously sustained to the miners' organization in that district? A. No, I don't know; I know he was a friend of Tom Reynolds, who was then with me, and he recommended him as a salesman.

Q. Well, in New York you stated, did you not, "I think he had been some of the officers in the state organization of miners"? A. Yes, but I didn't know which, I think he was.

Q. Further. "Hadn't he been president of it? A. He may have been, he was some officer, I don't know." A. I didn't know.

4569

Q. You knew he had sustained some official relation to the miners' organization in Michigan, didn't you? A. I think he did have, yes.

Q. Now, Mr. King, what relation had he sustained to the miners' organization? A. Just a common miner.

Q. Hadn't he had some relations with the miners' organization? A. No.

Q. Mr. Deacon? A. Mr. who?

Q. Mr. Deacon? A. I don't know him.

Q. Didn't you have a man by the name of Deacon at one time selling powder for you? A. No, not me.

Q. Now, Mr. Reynolds, what was his relation?

4570

R. S. Waddell—Cross

A. Thomas J. Reynolds was—had been president of the Miners' Union of the State of Illinois. He was recommended by the coal operators of the state to me.

Q. Now, your powder always carried the union label on the keg, didn't it, Mr. Waddell? A. No, not always.

Q. Practically always? A. No, we had our union busted up two or three times, we could not use the label only when we were union.

4571

Q. For a long period? A. I don't remember the period; the treasurer ran off and stole the funds once, and they disrupted.

Q. Didn't you testify as follows in New York, page 118: "Mr. Waddell, was that factory run under the union principle at first? Was it unionized? A. From the start to the finish.? Q. All the time? A. All the time. Q. And during what period did the kegs have the union label on them? All of the time? A. All of the time excepting for two occasions, for a brief period." Did you so testify? A. That is right, that is what I am saying now, I don't know the length of the period.

4572

Q. Who handled this business of Mr. McCall's for you down at Novinger? A. Mr. Burroughs.

Q. He went over there to Novinger and interviewed the miners, did he not? A. I don't know what he did. He made a contract with Mr. McCall. That's all I know.

Q. You had a contract with Mr. McCall? A. Yes, sir.

Q. And you recollect the instance in which Mr. McCall gave a deposition and some miners. That has been read here. A. Yes; a contract for \$1.15.

Q. To the effect that some trouble was gotten up because they wanted du Pont powder, because it had union labels on it? A. Yes.

Q. You recollect that testimony? A. Yes, sir.

Q. Do you not recollect that Burroughs went down to see those miners? A. No, sir.

Q. Did he not make report to you as to his operations? A. He always wrote me what he had done.

Q. Did he not tell you where he had been? A. Usually, when he would write me, yes; he would tell me.

Q. And you have no recollection of his going to Novinger on that business? A. No; not on that business. He may have gone. 4574

Q. Do you know who was furnishing the powder to McCaull's mines before you made your contract? A. No; except by what he testified.

Q. Do you know Mr. McCaull's signature? A. I do not know it. I never saw it, I think.

Q. Can you recognize and state whether that is his signature to that letter (indicating)? A. I could not; I never saw the man or his signature and I don't know anything about it. I don't think I ever had any correspondence with him. 4575

(Paper referred to was marked for identification Defendant's Exhibit 372.)

Q. Do you not know as a fact, Mr. Waddell, that the occasion on which there was trouble at McCaull's mine in regard to union powder was the occasion on which your powder was introduced to displace du Pont powder? A. No. I know that our powder had been introduced some time before. I know we sent them powder, a hundred kegs or two hundred kegs. They tried it out before they made a contract. The miners accepted it and we made a contract at \$1.15. Then McCaull asked us to cut the price to \$1.05 to meet the du Pont offer and I refused to do it, and he cancelled the contract and quit.

4576

R. S. Waddell—Cross

Q. Now, you do know something about the incident then? A. Yes.

Q. But you don't know that your man went down there? A. No. I got that from the testimony here.

Q. You know nothing about it except the depositions you have heard read. Is that your statement? A. What these men have sworn to. I do know we shipped them the two lots of it.

4577

Q. In regard to this matter of influencing miners, concerning which you have given some testimony, you paid out considerable sums of money for that purpose yourself, did you not, Mr. Waddell? A. No.

4578

Q. I show you your cash book marked P-57 on page 107 and ask you to look at the second item there and state whether on that date you spent some money entertaining miners. Won't you just read that? A. (Reading): "Entertainment miners, hotel bill \$41." Yes; I was attending the miners' convention, the State convention in Springfield, Illinois, and my hotel bill and entertainment of miners who were there cost \$41.

Q. Will you not look at the same page down there and see if you can find an item of \$31.59 under date of June 15, 1905? A. Paid miners for testing powder. Yes; that is for the labor of testing our powder.

Q. \$31.59? A. \$31.59.

Q. Where was that test made? A. That was for labor.

Q. I know; but where was the test made? A. My recollection is at Donk's mine; but I am not right sure about that.

Q. So when you are in the habit of putting your powder in for a test you are in the habit of paying some miners to test it? A. Well, where men would

give up their work and go to shoot our powder on a test we would pay them.

Q. That is your custom? A. It is not our custom, but we did it in one or two cases. I think there was another case where I paid six or seven dollars for labor.

Q. During the test I suppose they are taking out coal, are they not? A. Well, this was——

Q. (Interrupting): Just answer the question. During the test they are getting out coal? A. Yes; but they——

4580

Q. Now, just answer to the question. They get paid for what coal they get out, don't they? A. No; not testing in this manner.

Q. Why not? A. Because a man, say, may have No. 50, may be in a room, and if he tested in that room he would put his own ticket on the cars and get credit for it, if the coal were mined by the ton. I would not employ him under those circumstances. But if he went into an entry to shoot and went away from his place of business where he worked regularly I would pay him for his day's labor.

4581

Q. And you mean to say if he got a large amount of coal, that the Buckeye powder always gets out, and sent it out, he would not get paid for that amount? A. I don't know anything about their arrangements. Possibly he might. I think not, however.

Q. Will you look on the same book, page 69, under the date of October 1, 1904, and see if you find a \$25 item there? A. I guess I know what that is without looking for it.

Q. What is it? A. We had a miner working at our plant——

Q. Now wait a minute. Do you find the entry, \$25, there? A. Yes.

4582

R. S. Waddell—Cross

Q. How does it read? A. "Donations to Secretary Miners' Union." The poor devil died while he was working for me and I contributed \$15 to his burial and \$10 to his little daughter.

Q. This reads, "To the Secretary of the Miners' Union," does it not? A. Yes. The Miners' Union buried him and I contributed.

Q. I suppose if you found that the du Pont Company had ever contributed to things of that sort you would complain of it. A. I contributed hundreds and hundreds of dollars for the du Ponts that way.

4583

Q. Would you complain of that sort of a contribution if it turned up? You would complain of such a thing if such a payment was made by the du Pont Company for the same purpose? A. No; that is charity; I have paid in a whole lot of money for that.

Q. Look on page 70 and see what the note on that item of \$45.50 is? A. Page 70?

Q. Page 70, October 18, 1904, an item of \$45.50. A. I do not find any such item.

4584

Q. Voucher 105? A. That is on the credit side of cash. May be there was something coming in from the miners.

Q. Well, how does the entry read? A. Well, I have not found any such entry.

Q. What is that, how does that read (indicating)? A. That is traveling expense for a miners' committee that came from the mines to my mills to see powder made and to see it tested as against the du Pont powder at the mills.

Q. Oh, you had some du Pont powder at the mills testing it? A. Yes; we had some du Pont powder there.

Q. Who was running the du Pont end of that? A. I was. We shot it in a gun, one against the other.

Q. From what mine was that committee? A. I don't remember from what mine. Three or four of these committees came from different mines to see powder made and we paid their traveling expenses.

Q. And when you got them there from these various mines you yourself took both kinds of powder and undertook to demonstrate what was the best? A. We tested, we showed them how powder was made; we took them around the mines and showed them the whole business; we showed them how it was packed and separated, and then we conducted a series of tests. 4586

Q. As between those two powders, in your mill, or near your mill? A. I usually bought four kegs of du Pont powder at a time and conducted the tests.

Q. And conducted those tests there and before various committees? A. Whoever would visit us—

Q. And of course in every instance that must have been shown to men who were from a mine that was using du Pont powder? A. No. 4587

Q. Then what were you testing it against du Pont powder for? A. That was a convenient powder. There wasn't anything else on sale in Peoria that I know of except du Pont. I bought it through merchants.

Q. Did you ever test any Lafin & Rand powder that way? A. No. Lafin & Rand went out of existence before I went into business.

Q. Or any powder made at the Lafin & Rand mills then? A. There was only one agency at Peoria that I know of, and that was du Pont's.

Q. When did they go out of existence? A. I think the du Ponts purchased them about September, 1902.

4588

R. S. Waddell—Cross

Q. Did you write this letter in 1906 (indicating)? A. (After examination) That is my signature.

(Document received in evidence as Defendants' Exhibit A-373 and read to the jury as follows):

Peoria, Ill., May 26, 1906.

4589

Mr. Thos. Mackie, Gen. Purchasing Agt.,
Central Coal & Coke Co.,
Keith & Perry Bldg.,
Kansas City, Mo.

Dear Sir:—

Replying to your favor 24th inst. We thank you for the opportunity to quote you on powder, but fear the freight rates from our mills are so heavy they will shut us out.

We quote you \$1.00 per keg for Buckeye powder delivered at all your mines in Kansas.

Terms: 60 days, 2% off for cash in 10 days.

4590

This is equivalent to about 86 cts. for Lafin & Rand powder, if it were of the same grade as Buckeye. Recent tests of their powder that we have made indicates that it is so low in quality that it is no longer a competitor of Buckeye. We estimate the difference in the quality of our goods at about 10 cts. per keg, which would be equivalent to 76 cts. for Lafin & Rand-du Pont brand delivered at your mines. I believe they recognize the inferior quality of their goods for they have just closed a contract with C. G. Brechnitz, one of our stockholders at Belleville, Ill. He uses approximately 2,500 kegs per year, at 87 cts. per keg delivered at his mines, less 2% for cash. They have a haul by wagon of about 12 miles from their Phenix mills. On the quantity you use compared with this con-

tract, you should have a price of about 80 cts., but I presume they will want 85 cts. per keg delivered at your mines, as they have a monopoly of your business. From this they would make the ordinary keg deduction of 5 cts. for the empty kegs returned.

We are just figuring on a contract with a coal operator in this state where the du Pont-Lafin & Rand & Equitable Co. have a rate of $5\frac{1}{2}$ cts. per keg and they have quoted a little less than 90 cts. for the powder delivered, which indicates that they are quite willing to sell at a little less than 85 cts. near the mills.

4592

If you do not succeed in getting this price please let me know and I can furnish you the information necessary.

Truly yours,

Buckeye Powder Company,
R. S. Waddell, President.

By Mr. Button:

Q. So on May 26, 1906, there was still some Laf-
lin & Rand powder, was there not? A. Yes, at the
du Pont mills. They—

4593

Q. Well, did you test any of that powder in your
mills in this way that you have indicated? A. No.
That was a thousand miles away from my mills.

Q. You did not do that? A. I tested the du Pont
powder all the time.

Q. This price quoted in Kansas was to customers
in the class that you say you did not care to sell
to, was it not? A. That I didn't care to sell to?

Q. Yes. A. I don't know any class of customers
that I did not care to sell to.

Q. I thought you stated in regard to Mr. Simp-
son's trade that you didn't want trade down there.
You quoted him but you did not want trade down

there, that it was too far away? A. I could not take care of the trade is what I said, at 97½ cents in kegs, when my freight rate was 65 or 70 cents a hundred, about 18 cents a keg. I didn't want it.

Q. Just what did you mean by the last sentence in this letter: "If you do not succeed in getting this price please let me know and I can furnish you the information necessary." You meant to have them use that letter like the Brechnitz letter, for the purpose of getting a low price from the
4595 Laffin & Rand, did you not? A. Oh, no.

Q. That is not the interpretation of that? A. No—you can interpret it as you please, but the letter speaks for itself. I didn't want his business below a dollar.

Q. Also your statements about the Brechnitz contract, at a price of 87 cents per keg delivered at his mines, were not true, were they? A. Yes.

Q. When did they do that? A. That is what Mr. Brechnitz told me, but he corrected that by saying it was an allowance from 92 cents. Brechnitz gave
4596 me his price at 92 cents less an allowance of three cents a keg, for the use of his magazine, which made it 89 cents, less two per cent discount for cash, which made it 87 and a fraction. That was Mr. Brechnitz's statement to me.

Q. Were you present when Mr. Brechnitz gave his testimony in this case? A. Yes.

Q. In which he said he never got it less than 95 cents with an allowance of three cents for hauling it? A. And two off for cash.

Q. They always get the two off for cash, don't they? A. Yes. That brought about 92.

Q. Well, did you— A. (Interrupting): And two off for cash brought it to 89 instead of 87. Mr. Brechnitz was mistaken in his former statement to me.

Q. Did you furnish your attorneys with the information that is in your complaint, to the effect that the du Pont Company went around circulating malicious stories about the quality and character of your powder? A. Yes, but that is the truth.

Q. It is what? A. Yes, that is the truth.

Q. Laflin & Rand had a very poor powder, did they? A. The miners of Kansas through it out and called for powder at 98½ cents as against 87½.

Q. Was that an instance in which you brought the committee up to your mills and paid their expenses? A. No, I never heard of the committee. They made their own investigation and— 4598

Q. (Interposing): Will you look on that same book, No. 117, for voucher No. 1797, for \$23.61? A. Expenses railroad fare, miners, from Westfield, Illinois, committee. There were three who came over from Westfield, Illinois.

Q. What mine was that that they were connected with? A. That is the Dering Coal Company, that is using our powder.

Q. And did you conduct one of these competitive tests in your mill between the du Pont powder and yours in their presence? A. The miners were very anxious to see— 4599

Q. Interposing): Did you or did you not conduct one of these tests? A. I know we fired our own powder; I don't know whether we tested other powder at that time; I think not.

Q. You paid their expenses at that time? A. Their railroad fare, yes.

Q. How much more do you think Buckeye powder was worth than Laflin & Rand's, Mr. Waddell? A. Well, that depends on how it was made

Q. This Laflin & Rand powder that you are talking about in this letter; let us confine it to that. How much more per keg was Buckeye powder

4600

R. S. Waddell—Cross

worth than this Laflin and Rand powder that you were talking about? A. I know what the difference was in the price that the Consolidated and Merchants Coal Mining Company paid——

Q. I am not talking about prices; I am talking about the value of the powder. A. I don't know. I didn't see this powder.

Q. You didn't see this powder that you are talking about? A. No.

4601

Q. Your judgment in that was that the Buck-eye powder was worth 24 or 26 cents more a keg than the Laflin powder, is that about right? A. I didn't say that.

Q. You said that the price of the Laflin and Rand on this basis ought to be 76 cents and that yours is a dollar. Is that your judgment of a fair difference between the two powders? A. That is nearly all freight.

4602

Q. Your statement is: "We estimate the difference of the quality of our goods at about ten cents a keg," which would be equivalent to about 76 for Laflin-du Pont brand delivered at your mines——
A. Ten cents.

Q. So you have the price of Laflin & Rand delivered at 76 cents and your price at \$1.00. That is a difference of 24 cents, is it not? A. That is freight, yes.

Q. But the difference in quality you think is about ten cents; is that right? A. That is what I stated.

Q. Yes, is that your judgment? A. 97½ from 108½.

Q. Is that your judgment? A. They paid me that difference.

Q. I say is that your judgment of the respective values of the two powders? A. Made at the Kansas mills, as I had heard of them——

Q. Where did you see any powder made at the Kansas mills? A. Well, I had pretty good information as to the quality of powder they made out there.

Q. That is, somebody had told you something; is that it? A. Mr. Miller, ran the Kansas mills or sold their product for a number of years, and so I had a pretty good idea——

Q. (Interposing): So you were talking about the period prior to 1903, were you? A. I knew the general character of the mills and knew it was a powder——

4604

Q. (Interposing): That is, you knew it was a powder mill and that is all you knew of it? A. John Miller was the general sales agent of the Lafin and Rand——

Q. So it was what he told you? A. From many sources of information I knew they were not making a good, high grade powder.

Q. Not so good as the Buckeye? A. No.

Q. You were in the habit during the existence of the Buckeye Powder Company of sending out various circulars to the trade, were you not, in regard to your powder? A. We advertised, yes.

4605

Q. Did you send out that circular in August, 1904 (handing paper)? A. I think so.

Q. Will you please mark it?

(Paper received in evidence as A-374.)

Q. Did you send out one of which this is a copy in April, 1908? A. There is nothing on that to indicate, maybe if I read it over maybe I can tell you—nothing here to indicate that that came from my office.

Q. Don't you recollect testifying in New York that you did send out that circular? A. No, I don't recollect—copy of that?

Q. Yes. A. If I did, it was something else that reminded me of it; there is nothing but a blank

4606

R. S. Waddell—Cross

paper there; there is nothing to indicate; I must have had something else to remind me of it.

Mr. Button: (Reading Exhibit 374.)

Peoria, Ill. Aug. 22, 1904.

Dear Sir.

As their contracts expire, or conditions change, the coal operators of Illinois, Indiana, Iowa and Missouri, find it greatly to their advantage to figure with us on future supplies.

4607

The quality of Buckeye Powder is unexcelled, and with a mill capacity of over 1200 kegs (fifteen tons) per day, our ability to serve the trade is gratifying both to the company and its patrons.

The welfare of the Operator depends greatly on his patronage of independent powder mills.

Pennsylvania buyers have for years been saving a quarter of a million dollars a year over Operators in the middle west, on an equal volume of powder, by sustaining the independent mills.

4608

We hope you are among the fortunate ones who have short-lived contracts, and can join the procession that is daily coming our way. We can take a few more good accounts.

Independent mills in operation and about completed, can make a million kegs a year. No dearth of supplies.

Try a car of Buckeye and get familiar with a high grade powder at a fair price.

Please indicate your wishes and we will call on you.

Most of our patrons order by wire and mail, noting the equivalent of expense of time and travel in the reduced price.

Respectfully yours,

Buckeye Powder Company,
by R. S. Waddell, President.

Q. What independent mills did you refer to in that? A. The independent mills in 1904 were the Buckeye, all the mills of Pennsylvania, the Rand mills, mills in the Shamokin and anthracite regions, quite a number of them.

Q. The Fairchance and the Senior and the Excelsior and the Egyptian were coming along about then and the United States also, about that time?

A. No, I don't think any of them were built at that time.

Q. They were contemplated, were they not, and they were being built, were they not? A. No, not all of them. I think they came in—started in the fall or winter of 1904 and were built during 1905, and some of them later on; but at that time I could not tell.

4610

Q. In regard to this other paper, dated April 11, 1908, do you not remember you sent out a circular with the following statement in it: "The mill capacity for the production of powder in this country is about four times the quantity consumed"? Do you remember sending out a statement in April, 1908, with that statement in it? A. I have made statements similar to that. I do not know whether that is one of the statements or not.

4611

Q. Do you not recollect being examined at some length on it at New York? I will read from your testimony given there. This will be found at page 17: "Q. Do you recollect that a circular was sent to the trade, dated April 11, 1908, of which this is a copy (handing witness paper)? A. Yes, I remember that circular. I don't know whether I wrote it or whether my son wrote it, but I remember the circular. Q. You knew it was being sent out, didn't you? A. Yes, to a certain class of trade." Do you recollect that I handed you a paper there? That identical copy? A. I don't know.

Q. You do not recollect it? A. I think all that you handed me there were on the heading of the Buckeye Powder Company.

Q. Well, you said this: "A. Yes, I remember that circular. I don't know whether I wrote it or whether my son wrote it, but I remember the circular." My question there was whether you remembered this circular of April 8, 1908, of which this is a copy. Then I asked this question: "In this circular you state as follows"—and I was interrupted there with an objection, but finally I stated the question as follows: "Q. You said in this circular the mill capacity for the production of powder in this country is about four times the quantity consumed. Is that statement correct?" And you answered: "A. Yes, I think that is correct, or was at the time it was made." So, it seems that in some statement you made that statement? A. Yes, in the one you handed me I made that statement. I was speaking of capacity and not production.

Q. There was one item about the machinery that I omitted. You have said you could not get the kind of a corning mill that you desired. Do you mean that as an ordinary thing machinery manufacturers keep corning mills in stock? A. Yes, I think so. I know Olin Scott usually had a mill under construction; the Allentown Foundry and Machinery Company had an order for six presses from Laffin & Rand, and I got one of them.

Q. That is just it, they don't make corning mills except upon orders and specifications, do they? A. I think Olin could furnish you one any day and I know du Ponts could.

Q. They are not kept in stock? A. No.

Q. You got a small corning mill from this concern in York and your reason was that you wanted

to get started quickly; was not that it? A. No, they did not have the drawings or patterns for the large mills such as I wanted and they had to design it, and I helped them.

Q. You wanted to get some man who had the du Pont patterns, did you not? A. No.

Q. So you would not have to go to the expense of having any made? A. I wanted an Olin-Scott mill. That is what I wanted, and I couldn't get it.

Q. I understand. Then, was it not your idea in taking that small mill that you could use it temporarily and get your mill started early? A. Well, I was compelled to do it. I couldn't do anything else. 4616

Q. Was not that your reason? A. My reason was for taking what I could get, that is all I could get. There had to be a mill developed.

Q. You have forgotten that you testified on your direct examination that that was the reason you took the small mill. A. I don't remember what the question was, or what the exact question was, but I know the facts. 4617

Q. You don't remember it. Well, how much did you pay for a small mill from Baugher, Kurtz & Company? A. The books will show that. I should say——

Q. Your books do not show. A. I should say \$1,500.

Q. Do you remember sending it back? A. (Continuing) Probably \$1,500 f. o. b. New York.

Q. Do you remember sending the mill back, the small one? A. Yes.

Redirect examination by Mr. Abbott:

Q. Mr. Waddell, on your cross examination, very early in your cross examination, you were asked the question by Mr. Button as to whether or not

4618

R. S. Waddell—Redirec

you had some other suit pending against the du Pont Company and you stated that you had one against the Hazard Company and one against the Laffin & Rand Powder Company. Now will you state how those suits came to be brought? A. All of the parties, the du Pont people, Laffin & Rand and Hazard and other parties, were joined in the original suit——

Q. You mean in this suit? A. This suit.

4619

Q. In this present suit? A. Originally they were parties to this suit. We failed to get service on them, as I understood, and they did not enter their appearance, and it was necessary in order that this suit might be brought against all the parties—and that we could not try it all in one issue here—it was necessary to bring the suit against the Hazard Company in Connecticut and against the Laffin & Rand Powder Company in New York.

4620

Thereupon the following portion of the declaration was offered in evidence for the purpose of showing the original parties defendant in this action. The offer was objected to and objection overruled:

“The Buckeye Powder Company, a corporation, plaintiff, against E. I. du Pont de Nemours & Company (a corporation of Delaware), E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), E. I. du Pont de Nemours & Company (a corporation of Pennsylvania), du Pont International Powder Company (a corporation), Delaware Securities Company (a corporation), California Investment Company (a corporation), Delaware Investment Company (a corporation), The Hazard Powder Company (a corporation), Laffin & Rand Powder Company (a corporation), Eastern

Dynamite Company (a corporation), Fairmont Powder Company (a corporation), International Smokeless Powder and Chemical Company (a corporation), Judson Dynamite & Powder Company of California (a corporation), Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Pierre S. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Thomas Coleman du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner and Frank L. Connable, defendants."

4622

Q. Have you ever been a party to any suit of any character before against the du Pont Company except the present one? (Objection overruled.) A. No, I have never brought any other suit against the company.

Q. Have you ever been interested in any suit that was brought against the du Pont Company? A. I have never been in any way whatever.

Q. Have you ever been interested in any plant which has ever been sold to or purchased by the du Pont Powder Company at any time during the history of the du Pont Company down to the present time? (Objection overruled.) A. No, I have never had a dollar invested in any company except the Buckeye Company.

4623

Q. You were not interested in the Indiana Powder Company? A. No.

Q. You were not interested in the Chattanooga Company? A. No.

Q. Nor the Birmingham Company? A. No.

The Court: His first answer covers everything.

4624

R. S. Waddell—Redirect

Q. I call attention to the following allegations in the 11th paragraph of the declaration and ask you to state what it was you told your attorneys about that matter: "Plaintiff shows that the said E. I. du Pont de Nemours Powder Company as a part of its plan"—

The Court: What is your present purpose? Let me understand.

4625

Mr. Abbott: My present purpose is this: The attention of this witness was called, on cross examination, to paragraph 11 of the declaration. It was read over at length and Mr. Waddell was asked whether or not he had given his attorneys the information upon which those allegations were made. He said he did and he would be very glad to give it here.

The Court: He answered it.

4626

Mr. Abbott: He answered and said he would be glad to give it here. Now I think we are entitled to have the information given here.

The Court: Not at all. It needs no explanation. If you take up that kind of a re-direct examination it might continue for weeks.

Mr. Abbott: But he has been interrogated—

The Court: Certainly, and they had a right to interrogate him. What new matters were brought out?

Mr. Abbott: This was a new matter.

The Court: Certainly, but it was completely answered, was it not?

Mr. Abbott: I do not think so.

The Court: If we go into that we will never get through with this case.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. In the matter of the Government case: You stated in your cross examination that you had no idea whatever of bringing an action against the du Pont Company or that it would be necessary for you to take any steps of that kind until after your interview with Mr. Piatt. Is that correct? (Objection overruled) A. Mr. Piatt, yes. 4628

Q. You did not, however, take any definite action to cause any suit to be instituted until 1906, as I understand? A. May, 1906.

Q. Will you tell why it was you did not take action earlier than that, with the Government, in reference to the prosecution of the du Ponts?

(Objection overruled).

A. I knew, of course, that when I took any open, public action against the du Pont Company in defense of the Buckeye Company that it meant a fight to a finish and bankruptcy for the Buckeye, and I hesitated as long as I dared and until we had reached the final stages of dissolution of our company before I made a fight in self defense. 4629

Q. Prior to the time you instituted, or caused to be instituted, these proceedings on the part of the Government, was there any conference or any action taken by any of those interested in the Buckeye Powder Company concerning the action which you would take?

Mr. Button: Objected to.

The Court: I think he can answer yes or no.

4630

R. S. Waddell—Redirect

A. Yes.

Q. Did you act alone in the action you took in that matter? (Objection overruled). A. Oh, no.

Q. Who was associated with you in the effort to cause this action to be instituted at that time?

Mr. Button: Objected to.

The Court: If you simply want to show he was acting on behalf of the company I will allow that.

4631

Q. You may answer it within the ruling of the Court? A. My stockholders, my family, were interested; the members who were stockholders in the company.

Q. Upon your cross examination you were asked if you told your attorneys the facts recited in the complaint with reference to the purpose which the du Ponts had in view in putting detectives on your track. Now I would like to have you state how you arrived at your conclusion, that that was the purpose of defendants in putting detectives on your track.

4632

Mr. Button: Objected to on the ground I never asked him any such question. I asked him if he furnished his attorneys with information that the du Ponts had done any such thing as to bid up a plant or real estate upon him. Then he explained that he made no such statement, or rather his counsel explained that he made no such statement, simply that that was their purpose, and I asked him then if he was present when these detectives were hired and he said "no." That is all there was to it. I never asked him if he gave them any information which would make them think that that was the purpose of the du Pont Company.

Mr. Abbott: I read from page 4547 of our

transcript of this record: "Q. Your complaint states as follows: 'And with this end in view they placed detectives on the track of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabout, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid.' Q. Did you furnish the information for that statement in your complaint, Mr. Waddell? A. Yes. Q. Where did they bid up any property that you were trying to buy? A. I don't understand that that is what he says there. Q. Then you don't know that they did anything of that sort? A. I don't know, I know what the general plant was."

4634

4635

Mr. Abbott: "Plan" I suppose it was.

Now then, if your Honor please, we are entitled to show how this witness gave this information to his attorneys. We would like to have it shown how he came to believe that was the purpose of these defendants in placing these detectives upon his track.

The Court: No. Keep within the realm of fact.

4636

R. S. Waddell—Redirect

Mr. Abbott: This is a relevant fact if he can show him a reason for it.

The Court: No. Objection sustained.

To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

4637

Mr. Abbott: I will ask the defendant's counsel if they have letters of February 14, 1902, and February 27, 1902, heretofore called for.

Mr. Button: I have one of those letters. I do not know about the other (handing paper to Mr. Abbott).

Mr. Abbott: You have produced the letter of February 14, 1902, from Mr. Waddell to the Hazard Powder Company.

4638

Q. I show you this letter and I will ask you to state whether you know anything about that. (Witness shown letter dated February 14, 1902.) A. I wrote that letter. That is my signature.

Q. I show you defendant's exhibit A-200 and ask you to look at it and state whether or not that has any relation to the document which I have just shown you, Plaintiff's Exhibit No. 1403, and tell what this is? A. They are part of the same subject matter; the same topic was being discussed in both letters, and it was discussed orally at New York, and I went to Wilmington, Delaware, for the purpose of discussing it with Mr. Eugene du Pont before his death. He was ill at the time and I did not take up the subject with him. I passed it up.

Later Mr. T. C. du Pont took up the subject and wrote me referring to that second letter, which was a controversy that had arisen before the death of Mr. Eugene du Pont, a question I had raised. It did not have any reference to Mr. T. C. du Pont.

Mr. Abbott: I think that is sufficient.

The Court: The other side may probe it, of course.

By Mr. Button:

4640

Q. As I understand it, then, the first letter was written while Mr. Eugene duPont was running the company? A. Yes, sir.

Q. And the second one after T. C. duPont had come in? A. He came in and wrote me referring to this—

Q. I say the second letter was written by you after Mr. T. C. duPont had come in? A. Yes, it was in explanation of the first letter—

Q. My question is whether it was written after he came in? A. Yes, when he came in he found my first letter and then he wrote me and I answered him.

4641

(The letter referred to, marked Plaintiff's Exhibit 1403, and was read to the jury as follows:

Cincinnati, Feb. 14, 1902.

The Hazard Powder Co.,
New York.

Dear Sirs:

While last at your office, I expressed dissatisfaction with the changed methods of conducting the du Pont and Hazard business, so far as it relates

4642

R. S. Waddell—Redirec

to me and promised to take up the question at Wilmington. Mr. du Pont was ill and I did not distress him by mentioning it.

A synopsis of the points on which I wish to offer objections, is as follows:

1st. My engagement is for service to du Pont and Hazard Powder Companies and not to a delegated authority.

4643

2d. I am apparently controlled, without my consent, by a secret organization that is oftner antagonistic than friendly to my principals—to which I must, through you appeal, as a primary condition to doing the work ofr which I am employed; and which authority nullifies my service by arbitrary acts of which I have no notice or knowledge and which acts are not subject to the control of my principals.

4644

3d. All information as to special contracts and cut prices thus arbitrarily granted to rivals and denied to us, and by which I am prevented from rendering the service contracted, is withheld by principals and all others and is only discovered after we have been made ridiculous in the presence of the trade to whom we are supposed to represent principals.

I might specify the other points of building up one faction by tearing down another, etc.

The Hazard and du Pont Companies are greater than any individual and no matter if their action be unfair and unjust, it must stand—will be, no doubt, your decision.

I file this formal protest and will be pleased to

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4645

have your views on the subject and what, if anything, you have to suggest as a remedy.

Yours very truly,

R. S. Waddell, Agt.

By Mr. Abbott:

Q. I show you another document marked for identification No. 38, and ask you to state if you know anything about that? A. That is a letter I received from Mr. T. C. duPont. 4646

Letter referred to offered and received in evidence and read to the jury as follows:

Wilmington, Del., March 6, 1902.

Mr. R. S. Waddell,
Cincinnati, Ohio.

Dear Sir:

I have your letter to the Hazard Powder Company under date of February 14th. As explained to you in person yesterday, your letter will have due consideration and you will have to bear with me a little while until I can get the run of things a little better. 4647

Yours truly,

T. C. du Pont,
President.

Pencil Notations: 2 to 4 weeks another interview.

Q. Was that letter the letter you received in answer to the one just read? A. Yes.

Q. I show you plaintiff's identifications 39 and 40, and ask you to state whether or not you know

4648

R. S. Waddell—Redirect

about those. A. They are both letters from Mr. T. C. duPont addressed to me.

Letters offered in evidence and objected to. The letter, dated Wilmington, April 29, 1902, to Mr. Waddell, and signed by Mr. T. C. duPont, was admitted and read aloud to the jury as follows:

4649 E. I. du Pont de Nemours & Co.

President's Office.

Wilmington, Del., April 29, 1902.

Mr. R. S. Waddell,
Cincinnati, Ohio.

Dear Sir:

4650 Please pardon my not answering your letter of April 17th sooner. The general plan which I discussed with you is thoroughly covered in that letter. It may be advisable after discussion to make some territorial changes, as the consumption of powder in various districts changes, but this is a matter of detail, which can be talked over later. I am now trying to get data which will enable me to tender to you an opportunity of investing in one or more companies.

I go with you fully in the last paragraph of your letter that there are splendid opportunities for saving a large amount of money. Feeling that you only want what is fair and just, I think you can rely on getting a satisfactory compensation. As I get a little deeper in the business, I find complications which are aggravating in the amount of time they take. I find too, many opportunities for

big savings. Kindly keep this matter quiet for the present.

Yours truly,

T. C. du Pont,

Q. Now, Mr. Waddell, you have testified on your cross-examination regarding certain differences that arose between you and your superiors shortly after you entered the employ of the duPont Company at Wilmington. I would like to have you state the origin of those difficulties. (Objection overruled.) A. There was no difficulty that arose shortly after I went to Wilmington. I went there in the spring of 1902. 4652

Q. By shortly, you mean—— A. No difficulties arose until towards the fall, along about September, I think.

Q. What were those difficulties? A. I had been given other duties. Mr. duPont had asked me to do the buying and purchasing for all of the loaded shells, and a number of other supplies that the general purchasing agent, Mr. Wheatley, did not know anything about, and I understood the class of trade. He called Mr. Wheatley, purchasing agent, Mr. Dunham, the auditor, and myself, into his room and made a personal request stating that Mr. Wheatley had purchased more than 150,000 loaded shells and sent them over the country, and that they were wrong, and the orders not properly placed, and he asked me to do the work. I agreed to do it. In addition to the selling I did the purchasing. I asked Mr. Dunham at the time if I should make the orders and send them out to the purchasing department and he said no. 4653

Q. Who was Mr. Dunham? A. The auditor. Mr. Wheatley objected to them coming to him, because

he did not know whether they were right or wrong and did not want to bother with them. Mr. du Pont told me to do the purchasing direct and the bills would be sent to me for O. K., for me to audit them, and Mr. Dunham would pay them. I did so for probably two months, certainly for six weeks, running up to forty, fifty or eighty bills a day, purchases for shipping shells all over the United States. I o. k.-ed the bills Mr. Dunham sent me until one day I received a stock of them back. He had paid hundreds of them. He sent a stack back to me with a very insulting letter of three or four pages——

4655

Mr. Button: I object.

The Court: Yes, do not characterize it.

4656

A. (Continuing.) Very well. I took the matter up with Mr. T. C. duPont, said I was doing the work for the accommodation of other departments, and I did not enjoy the criticism for doing it, and there was a collusion between the purchasing and auditing departments; and the friction arose over those matters, and over one other, which resulted finally in my resignation. It was not ill feeling against the duPont people, against the principals, I never had a controversy with them; it was due to friction with the departmental officials.

Q. Was that controversy you just referred to taken up by Mr. T. C. duPont in an official way?
A. Yes.

Q. With what result? A. He told the three of us to go settle our own difficulties, that he didn't want to mix in it.

Q. I show you a letter and ask you to state whether you know anything about that. A. That is a letter of Mr. T. C. duPont addressed to the heads of

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4657

the three departments, my department and Mr. Wheatley's and the auditor's.

(The letter referred to was offered and received in evidence as Exhibit No. 1404 and was read to the jury as follows) :

E. I. du Pont de Nemours & Co.
Wilmington, Delaware.
PRESIDENT'S OFFICE.

November 21, 1902.

4658

Mr. R. S. Waddell, Gen'l. Sales Agent,
Mr. R. H. Dunham, Auditor,
Mr. Wm. Wheatley, Purchasing Agent.
Office.

Gentlemen :—

Thinking that by this time the little differences that our system seems to have developed among you has been deeply buried by the common-sense and loyalty to the company that I know animates all, I can refer to the correspondence that passed some three or four weeks ago between you.

4659

It seems to me that Mr. Wheatley was not unreasonable in asking Mr. Waddell for a requisition as against a bill incurred by Mr. Waddell. Under our system, all purchasing, of any shape or form whatever, should pass through the purchasing department, even when articles are purchased, as of necessity they sometimes will be (and it is best that they should), by outside departments (as in this case, advertising was purchased entirely properly by Mr. Waddell for the department), such cases should still go through the purchasing office as a matter of record.

4660

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It is the place of the purchasing agent to secure records of outside purchases, and it should be his effort to make the task of approval or endorsement so simple that it will not entail troublesome red-tape upon the other departments.

4661

Each man has his own individual conception of the details of his own department and so long as these conceptions do not interfere with the system as a whole, they should be encouraged, not only by the company but by one department as with another. They stamp individualism on the department and in that way upon the company.

4662

I would urge that from this on, in matters of this kind the thing to do is for the heads of the several departments to discuss together any difference, and, keeping in mind that there must be give and take on both sides, to agree among themselves as to what best in the matter of co-operation. A few friendly words at the start will often avoid a volume of trouble afterwards. If the managers of the departments will always figure out that which is best for the interest of E. I. du Pont de Nemours & Company, there will be very few cases where a solution cannot be reached in an amicable way. I would again urge, that you follow this policy from this on, and let all sides forget that this controversy has ever had existence.

Yours truly,

T. C. du Pont,
President.

Q. This letter was dated November 21, 1902. A short time after that letter was written you sent in your resignation, did you not? A. In two or three days, in reply to that letter; but there were a number of other items not covered there—in the correspondence.

Q. In that connection I will ask you to state what other differences, if any, were there, or other difficulties that arose between you and any other employe of the duPont interests at that time, or just previous to that time? (Objection overruled.)

A. There were several controversies that arose between the heads of the departments, sales, auditing and purchasing, with myself on one side and Mr. Dunham and Mr. Wheatley on the other. I had been to New York to attend a smokeless powder meeting at which the prices were advanced and arriving at Wilmington at 7 o'clock in the evening I had to send out telegrams throughout the United States and unable to get stenographers after night I had the letters of advice and telegrams printed, I think some 500 or 600 of them, and I mailed them that night and sent the telegrams, creating a bill of about \$7.50 for printing. I was unfortunate enough to employ a printer that Mr. Wheatley was unfriendly toward, and the bill was sent to the auditor and he sent it to the purchasing department and I was called before the officers of the company for incurring an expense item for the sales department of \$7.50. There had been a voluminous correspondence on the subject before I learned anything about it. There had been a number of incidents of that kind that accumulated, that brought about my resignation. It was not a controversy with the heads of the du Pont Company but departmental friction.

4664

4665

Q. Did you at the time have any difficulties with Mr. Rice of Chicago, about that time, while you were general sales agent? A. Yes, I was announced as general sales agent of the United States, and Mr. Rice in charge of the largest branch office, refused to recognize the general sales department, never had any correspondence with us, and when I had to

4666

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check his account of sales or have any connection with the work of the Chicago office and its immense field into the northwest, I had to get Mr. T. C. or Mr. Moxham to write the letters.

By Mr. Button:

4667

Q. Is this one of the reasons for your resignation, in the same category, or this trouble with Mr. Rice? A. That was part of it. I was not general sales agent. I was only so in name. I bore along hoping in time that the company would be able to bring about a solution of that; but they did not.

By Mr. Abbott:

4668

Q. Before you left the employ of the du Pont Company and started out to build the Buckeye Powder Company plant did you know of any change of policy, had there been any change of policy announced to you by any one in connection with the du Pont Company's affairs with reference to the future purchases of competitive plants? A. Yes, sir.

Q. What was that policy? A. On several occasions Mr. T. C. du Pont and Mr. Moxham stated to me that the old policy of the old companies purchasing competitors was entirely abandoned, and hereafter no mill would ever be purchased by the du Pont Company, no competitor would ever be purchased. I understood that thoroughly.

Q. When did they first make that announcement to you? A. During the summer of 1902. I would not be able to fix the exact date, but after my resignation was handed in four or five times it was mentioned.

Q. So that when you left the employ of the com-

pany you fully understood that to be the policy of the company, did you?

Q. I show you Plaintiff's Identification No. 41. In the first place, let me ask you whether you have a copy of the letter of November 25, 1902? A. No.

Q. What did you do with the copy you had or the letter you wrote at that time? A. I kept it and gave it to the Government.

Q. Is the document I now had you a correct copy of the letter you gave at that time (referring to Plaintiff's Identification 41). A. It is a correct copy, yes, sir. 4670

Q. This letter begins by referring to your favor of the 21st instant. I will ask you whether or not that letter of the 21st instant is Plaintiff's Exhibit No. 1404? A. Yes, Mr. du Pont's letter to me.

Q. That was the letter in regard to the difficulties which you had with the auditing department? A. And the purchasing department.

Q. Which was read to the jury yesterday? A. Yes.

(Letter received in evidence as Plaintiff's Exhibit 41, and read to the jury as follows): 4671

Wilmington, Del., Nov. 25, '02.

Mr. T. C. du Pont, Prest.
Office,

Dear Sir:—

Replying to your favor 21st. inst.

Your mention that a record of all purchases by other Departments must be made in the Purchasing Department is another new feature—one of the numerous changes, made without notice, in the so-called "System" of this business during the past four months.

To this undefined and vacillating policy, plus

4672

R. S. Waddell—Redirect

petty jealousies, ignoble ambitions, and a tyrannizing spirit, the present unsatisfactory condition of the Departmental relations may be attributed.

A definite policy for the conduct of the business along fair and just lines might have been evolved. Instead of this, your letter indicates that it is the purpose to thrust the heads of the departments, like roosters, into a pit, to fight for supremacy. The stakes are too small.

4673

I have never been involved in such a disgusting condition of business.

You state that if we will "figure out that which is best for the interest of E. I. du Pont de Nemours & Co. there will be few cases where a solution cannot be reached in an amicable way."

Permit me to reply that for twenty years I have sacrificed my personal interests for the good of the du Pont Company.

4674

Possibly my training under different methods of business; an independent spirit that is not tolerant of such small actions as we have lately experienced; or that I am disqualified for service as an automaton in a business machine, one or all, may influence my judgment.

Whatever the causes, I can see no reason why I should continue this unhappy relation.

I, therefore, tender my resignation as General Sales Agent of the du Pont and Hazard Companies for immediate acceptance, to take effect December 1st, 1902. If you should desire that I remain until Jan. 1st. to install my successor, I will be pleased to do so.

Truly yours,

R. S. Waddell.

Q. When you sent in that resignation you then had your negotiations with Mr. T. C. du Pont, did

you, with reference to entering into the powder business, the manufacture of powder and the building of a plant? A. Not immediately. He sent for me—

Q. That led to the negotiations, did it? A. The negotiations followed.

Q. I show you Plaintiff's Exhibit No. 37 for identification and ask you to state what that is? A. That is a letter from Mr. du Pont addressed to Mr. Hilles, and a copy sent to me.

(The letter referred to was offered and received in evidence as Plaintiff's Exhibit 37, and read to the jury, as follows):

4676

January 21, 1903.

Mr. Wm. S. Hilles,
City.

Dear Sir:

I had a talk with Mr. R. S. Waddell yesterday and the only thing in the agreement that was not satisfactory at the time Mr. Waddell was called West was the location of the mills. We have agreed on this point as follows: The contract to run for ten years; and that at the end of nine years if a new contract is not entered into and if Mr. R. S. Waddell so elects, he may sell and we must buy his interest in the plant at its cost to replace value by his interest there in at whatever it may be valued; commencing thirty days after the expiration of nine years, if Mr. Waddell so elects, to pay for same in the following manner: $\frac{1}{12}$ at the end of thirty days; $\frac{1}{12}$ at the end of sixty days; $\frac{1}{12}$ at the end of ninety days and so on so that at the expiration of the ten years or during the last one year of the contract, Mr. Waddell would have been paid in twelve equal instalments for his entire interest in the plant. Value of said plant in

4677

4678

R. S. Waddell—Redirect

case the parties thereto do not agree, to be fixed by arbitration. Each party to select an arbitrator and these two to select a third. The decision of the arbitration committee to be final.

I go to New York to-day for a few days. Won't you please take up with Mr. Waddell these questions of detail and push through the organization as far as possible? I can be reached by telephone at the Lafin & Rand Office in New York, or Mr. Moxham can act for us equally as well as myself.

4679

Yours truly,

T. C. du Pont.

Pencil Notations: Mr. R. S. Waddell. Copy from Mr. du Pont. We have not agreed. Mr. D. suggested this method.

Q. Did you make these notations in pencil on the side? A. I did.

Q. Were these notations made at the time this letter was given to you? A. Yes, sir.

4680

Q. This is the pencil notation on the side of this letter: "We have not agreed. Mr. D. suggested this matter." Is that a correct statement of the facts? A. Yes, sir; we did not agree. That was a mere suggestion of Mr. du Pont. I did not agree to it at all.

Q. In regard to your negotiations with Mr. Simpson, who represented the Consolidated Coal Company and the Western Coal Company, you were asked on cross examination concerning whether you made any complaint against losing Mr. Simpson's business, and you indicated you did not make any complaint as to some of that business. I would like to have you make it clear just what part of Mr. Simpson's business you did not make complaint of and just what part you did make complaint of losing. A. I was testifying to the business of the

Western Coal Mining Company, at the mines of that company particularly which were in southeast Kansas and Oklahoma and Arkansas. I did not make any reference to the mines that were in Illinois or the mines of the Consolidated Coal Company, which was a separate corporation.

Q. Where were the mines of the Consolidated Coal Company located? A. They were all in Illinois.

Q. So, as to the mines located in Illinois, you did then make complaint against losing their business? 4682
A. Yes.

Q. Mr. Button asked you with regard to the Brechnitz matter, whether or not you had taken away customers that had belonged to the du Pont Company, when you undertook to do business with Mr. Brechnitz. I would like to have you state whether or not the coal operators with whom Mr. Brechnitz had contracts at the time you began to do business with him were furnished with du Pont powder? (Objection overruled.) A. I know Mr. Brechnitz had been the agent of the Oriental Powder Mills, that he had supplied his trade with Oriental powder, and the trade came to me from Brechnitz unsolicited by me. I did not solicit the trade from Brechnitz. I did not know the customers of Brechnitz. 4683

Q. Did the Oriental Powder Company have a plant of its own in that neighborhood? A. No, its nearest plant was at Fairchance, Pennsylvania. It had an agency in St. Louis.

Q. Mr. Waddell, in regard to the contracts which you stated that you originally made in the Pochontas District, some inquiry was made by Mr. Button of you in regard to whether Mr. Rood assisted you in making those contracts. What is the fact in regard to that matter? Did Mr. Rood have anything to do in assisting you in making those

4684

R. S. Waddell—Re-Direct

contracts? A. Mr. Rood left our employ April 30, 1897, and those contracts in Pocohontas coal fields, the Bramwell District, were not authorized by the Powder Association until June. I went personally to the Bramwell District, in the Pocohontas field to negotiate with those people. Mr. Rood knew nothing about it.

Examination Concluded.

4685

Mr. Abbott: At this time now if Your Honor please, I desire to call your attention to the fact that here are the exhibits which were offered in evidence by the defendants, letters which were produced and read by Mr. Button on his cross examination, which we have examined and answers to which and other matters referred to therein were asked for and produced under a subpoena *duces tecum*. Now here are the answers (Laying bundle on table).

4686

Which have been produced as far as we are able to find them from the letters known as the Hazard letters in this file. And here are the answers relating to the du Pont papers which are in this file (indicating) and here are several du Pont replies too that have been produced (indicating): There are some other letters which have been produced. We will desire to read a number only, a small number of these letters, and we would desire to at this time to offer in evidence all letters and papers which have been produced by the defendants under the subpoena *duces tecum* in answer to the various documents which were read in open Court and I had to have them marked. It will take a little time to do this.

The Court: Do it later. Are you offering them in evidence?

R. S. Waddell—Redirect

Mr. Abbott: Yes, I offer everything.

The Court: Any objection to that?

Mr. Button: We have no objection.

The Court: Very well, let them be marked subsequently so that we won't lose any time about it.

Mr. Graham: They will all have to be read then.

Mr. Abbott: I am not going to read all of them.

4688

Mr. Katzenbach: They certainly must be read if Mr. Abbott offers them in evidence and puts them in evidence.

Mr. Abbott: I don't think so.

The Court: I should hope not.

Mr. Abbott: I am only going to read a very few of them if your Honor please.

The Court: What is the use of offering in evidence what you don't propose to use?

Mr. Graham: Why cumber up the record then if they are not going to be used?

4689

The Court: There is not any good purpose served in putting these in evidence if they are not going to be used. There is no use of putting anything in evidence except what is going to be used before this Jury.

Mr. Abbott: I will say this if your Honor please, that one reason why we desire to offer them in evidence is this, that the defendants read a very large number of letters,—I think 104 or perhaps more than that, covering a period from—a long period while Mr. Waddell was in the employ of the defendants and we asked to have these other letters produced because we thought they would support the statement made by Mr. Waddell as to the relations—

4690

R. S. Waddell—Redire

The Court: You are entitled to the whole correspondence, but what I say now is if you don't want them and are not going to use them, why put them in evidence?

Mr. Abbott: We want them and I at some time was going to make this suggestions, and I will make it now so as to cover the whole thing and save time:

4691

There are a number of things contained in the Lent exhibit and other documents which have gone before the Court and have been admitted, that we would like to refer to from time to time, and it would be simply folly to undertake to read everything here before the jury because it would not even end, so far as this case is concerned; but we think it would be of very great help in argument, in addressing the Court and in addressing the jury, to call attention to what there is in these documents. Now if we can have the privilege of reading these documents at any time during the case,—both sides to have the privilege of reading any of the documents which are in evidence,—we think that will very materially lessen the time and difficulty in trying this case; and I think it would be foolish to insist that they should be read at this time, and I now make that request of the Court.

4692

The Court: They must be used before the jury, they must be used for some purpose or else there is no use putting them in evidence. Merely dumping them here and saying they are in evidence means nothing to the Court and jury.

Mr. Abbott: I understand that.

The Court: If you want to save time, in

other words, if you don't want to duplicate the reading of them, if I catch what you want, and want to reserve them until such time as you may want to use them in argument to the jury instead of in the case, very well.

Mr. Abbott: Not only use them in argument, not necessarily before the Court, but as well before the jury.

The Court: Or at the conclusion of the case.

4694

Mr. Abbott: At any time.

The Court: So long as you use them.

Mr. Abbott: At any time.

The Court: Any objection to reserving the reading of them until such time?

Mr. Abbott: I don't expect to use all of them, if your Honor please, I would say that very frankly.

The Court: No use putting them in evidence, then. No use putting anything in evidence that you are not going to use simply because the other side don't object.

4695

Mr. Button: We have a suggestion that we would like to make about these letters, that Mr. Abbott is going to use a few of them, why not let him put those in evidence and then we will go through the list and see the ones that we want to use and we will put those in evidence, and leave the rest of them out.

Mr. Abbott: I will say this, if your Honor please, so I won't be misunderstood, that my only purpose in offering these, all of these, is to show our good faith. We don't care for a great deal of the matter that is in them, but we don't want the question raised

4696

R. S. Waddell—Redirect

that we had these documents and did not offer them.

The Court: Neither side is entitled to the whole correspondence upon a given subject which is entered upon at all, and if there is no objection, there is no use of putting anything in that is not to be used by counsel.

4697

Mr. Button: We are perfectly agreeable to the suggestion that they may go in and be referred to without reading them at all.

The Court: But afterwards,—let it be understood that that which is not referred to or read cannot go in. The rest of them will be eliminated. No use loading up the record.

Mr. Abbott: All right.

4698

Mr. Abbott: Now in this connection, if your Honor please, I have certain letters here that have been produced by the defendants marked 436 and 437, 463, 432, 433 and 434 for identification, which I offer in evidence, but I don't care at this time to take up the time to read them, but may do so later under the suggestion which was made yesterday.

Mr. Button: I understood that you offered yesterday all that has been produced. Was that a mistake on my part? Are these in addition to what you offered?

Mr. Abbott: These are some that I had in a separate package here, except a few that I have reserved here for later consideration.

Mr. Button: Well, in order to keep track of these, does this complete everything that has been introduced?

Mr. Abbott: That is why I gave those numbers so as to segregate them from the others.

Deposition of Charles A. Parry, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Parry, where do you live? A. Hanna City, Illinois.

Q. How long have you lived there? A. I have lived there since '98.

Q. 1898? A. Yes, sir.

4700

Q. What is your business, what was your business during that time? A. Coal mining.

Q. Where were you employed, that is, for whom were you employed? A. Do you mean Applegate and Lewis?

Q. Yes. A. Before Applegate and Lewis, I worked for Richard Newsome, of Peoria; he owned the mine before Mr. Lewis.

Q. In your business as a miner, have you had occasion to use black blasting powder? A. Yes, sir.

Q. What grades or kinds of powder have you used during that time? A. I have used single "C" du Pont and single "C" Buckeye.

4701

Q. Have you used any other makes or grades of powder? A. Not in Peoria County.

Q. You have elsewhere? A. Yes, sir.

Q. Now, when did you use any Buckeye powder first, when did you first use any Buckeye powder? A. Between six and seven years.

Q. Between six and seven years? A. Yes, sir.

Q. And where was it that you used Buckeye powder during that time? A. Hanna City.

Q. State such facts as you have within your knowledge as to the results which you obtained from the use of Buckeye powder with reference to

4702

Charles A. Parry—Direct

the amount of coal which was produced per keg. A. Well, in regard to the powder, of course, the first keg of Buckeye powder, they came in and asked me if I would try it, and I said I certainly would; I opened the keg of powder, and noted that it had a brighter look than——

4703

Q. What was that bright look? A. The glaze on the powder, and of course, we had been using du Pont here, so we were accustomed to the amount of powder that was shot, and would naturally give the same amount, or pretty near, as the other shot; the consequence was, we had to dig our coal from further back.

Q. What do you mean? A. It was blown further away from the working place.

Q. What was the reason of that? A. Too much powder.

Q. Too much? A. Too much powder.

Q. Then what did you do? A. I cut my powder down.

4704

Q. How much did you cut it down? A. Sometimes four, sometimes five, and six inches.

Q. Five or six inches less than what? A. You give a shot sometimes, according to the width of the shot and the depth, you would give a shot three and a half feet wide by six feet; you would give that about two and a half feet of the du Pont.

Q. How much did you give to the Buckeye powder in the same conditions? A. Two feet two.

Q. Did you keep track of the results that you obtained from the use of Buckeye powder at that time? A. Well, I did, yes. I got them at home, but not here, unless they are misplaced. I keep every day's work, and have ever since I worked in the mines, so that if there was any mistake——

Mr. Katzenbach: You say you have a record of that at your home?

The Witness: Yes, sir.

Q. About how many tons of coal did you obtain per keg of Buckeye powder, as a result of the experience you had that you have just now testified to? A. Well, at times you will get 20 tons, and other times about 18.

Q. With Buckeye powder? A. Yes, sir; take it on an average, about 18 tons.

Q. Was that your uniform experience in the use of Buckeye powder? A. Yes.

Q. What was your experience as to the number of tons of coal you obtained by the use of du Pont powder per keg? A. I had as low as seven tons to a keg of du Pont; of course, conditions was a little different. 4706

Q. What was the average amount you had from du Pont? A. I think the average amount was about 17 tons.

Q. Under the same general conditions that you used Buckeye powder and du Pont powder, what were the general results? A. The general results were very easy to find out.

Q. What were they? A. For a better grade of coal with the Buckeye powder? 4707

Q. And as to the amount, what were the results? A. You would get about 18 to 20 tons of coal to a keg, straight through.

Q. With what powder? A. Buckeye.

Q. And how many kegs with du Pont powder? A. About 17.

Q. Did you state the facts which you have just now stated with regard to the results of your experience and use of du Pont powder and Buckeye powder, from your own knowledge and experience? A. Yes, sir.

Cross-examination by Mr. Katzenbach:

Q. How many miners were employed in the mine

4708

Charles A. Parry—Cross

of Applegate and Lewis at Hanna City while the Buckeye powder was being used in that mine? A. Now, that would be a question beyond my knowledge, to a certain extent. I may tell you a certain amount, and I may be away wrong.

Q. You don't know, then, how many miners were employed in the mine at the time Buckeye powder was being used? A. Not to be positive, no sir.

4709

Q. While Buckeye powder was being used in the mine, was there any other kind of powder being used there? A. Yes.

Q. What powder? A. Du Pont.

Q. The men could get either Buckeye or du Pont, just whichever they preferred, from the operators, Applegate and Lewis, could they not? A. Well, to a certain extent, yes.

Q. The price of Buckeye and du Pont to the miner was the same? A. Just the same, \$1.75; we paid the same price.

4710

Q. While you were using Buckeye powder, did you see other miners using du Pont powder? A. Yes.

Q. Did a greater number of miners use du Pont than Buckeye? A. That I am not prepared to answer.

Q. You saw a great many miners using du Pont during that time? A. No, there wasn't a great many miners there.

Q. You said a little while ago, you didn't know how many there were there? A. I did.

Q. Can't you approximate? A. Yes, I can; I may not come—

Q. Approximate how many miners were there. A. I say no.

Q. Approximate how many miners there were there. A. I refuse to answer.

Q. You can approximate how many miners were there, can't you? A. I said I refuse to answer.

Q. You refuse to answer? A. I refuse to answer.

Q. Do you mean you can, but you won't? A. I refuse to answer the question.

Q. You can, but you won't? A. You have my answer.

Q. You say you can, but you won't? A. I object to the question.

Q. Then you have no idea how many miners were working in the mine when Buckeye powder was being used? A. No, sir. 4712

Q. Were the miners in the mine of Applegate and Lewis paid for the number of tons mined? A. Yes.

Re-direct examination by Mr. Abbott:

Q. Did your duties as a coal miner impose upon you any responsibility for the number of miners employed in the Applegate and Lewis mines? A. I don't think so.

Q. Did you ever keep track of the number of miners employed in the mines? A. Not at that time, no. 4713

Q. Whose duty was it to keep track of the miners employed in the mine, if you know? A. The only way would be through the Union; every man that belonged in the mine had to be a Union man, and, of course, the Secretary of the Union knew and could tell you every man's name down there.

Q. You were not the Secretary of the Union? A. No, not at that time.

Q. Mr. Parry, do you know anything about the test that was had between Buckeye powder and du Pont powder at the Applegate and Lewis coal mines? A. Yes.

Q. An official test? A. Yes.

Q. State when that was. A. I couldn't tell the date.

4714

Charles A. Parry—Re-Di

Q. No, about the time, as near as you can recall it? A. Shortly after the Buckeye powder was introduced in Hanna City.

Q. Shortly after that? A. Right after.

Q. Who had charge of that test at that time, if you know? A. I had charge of the Buckeye powder.

Q. Do you know who had charge of the du Pont powder? A. Yes.

4715

Q. Who did? A. A man by the name of Albert Isbell.

Q. State in your own way all the facts in connection with that test; how it was conducted, and what the results were.

Q. Mr. Parry, state just why under-cutting of coal was unfair in a test of that kind? A. Because the under-cutting of the coal was unfair insofar as that when you under-cut a vein of coal, it isn't shooting the coal from the solid, and it gives the powder a better chance to work in shooting, because all it has to do is to roll it over.

4716

Q. What is the relative difference in the amount of coal given by any shot when it is under-cut, as against a shot which is fired from the solid? A. It is quite a loss of the material in it.

Q. Can you state how many tons of coal there would be difference? A. Now, for instance, we would work on that same proposition; you were under-cutting the coal; now, I am working in a 12-foot entry and it's mined under 6 feet; I shoot that entry down in two shots, and I give one shot 20 inches of powder, and the other shot 22, and from them 46 inches of powder I get 11 tons of coal. When I have the entry on the solid, I get my coal in the center, and I would have to shoot two shots for one. I said when we were on the solid, I was in an 8-foot place, and, of course, that

would make a difference in the tonnage on a day's run; it would take 4 feet of coal from it, and it took more powder by far to shoot from the solid than to under-cut, which anybody will know.

Q. Can you state, of your own knowledge, about how many tons of coal, if you know from your own experience, would be produced from a keg of powder as fired from an under-cut, as against a keg of powder when used from the solid or fired from the solid? A. The amount of coal you can get from the coal what is under-cut, you can place it at 60 tons to the keg, and heretofore, on the solid, it would not average at the mines 17 tons, so you see there is a big relative difference in under-cutting a shot and firing from the solid.

4718

Q. And that is what you mean when you characterize this as— A. It is unfair advantage.

Q. Now, the conditions, according to the best of your knowledge, were the same general conditions in both of the rooms which were chosen for this test? A. Yes, they were side by side.

Q. And that same remark applies to the last comparisons you made as to the amount of coal you made from solid and from under-cutting? A. Yes, sir.

4719

Recross examination by Mr. Katzenbach:

Q. The superintendent, Mr. Morton, was a strong advocate of Buckeye powder, wasn't he? A. That I don't know.

Q. Didn't he ever ask you to use it? A. Yes, sir.

Q. He did ask you? A. Yes.

Q. He asked you to use it when you were using du Pont, didn't he? A. Yes, sir.

Q. You say he called off the test? A. The superintendent.

Q. Mr. Morton? A. Yes.

4720

Charles A. Parry—Re-redi

Q. Then there never was a test that was completed in the Hanna City mines between Buckeye powder and du Pont powder, was there? A. The test was all right as far as it went.

Q. What do you mean by saying it was called off? A. As far as it went, it was a test; the keg of powder was pretty near gone, both kegs.

Q. Which keg of powder had mine the most coal? A. The Buckeye, as far as it went.

4721

Q. How can you determine that, how do you know that? A. I was right there when they measured the powder.

Re-redirect examination by Mr. Abbott:

Q. Did you mean powder? A. The powder that was left to each keg.

Q. How many tons of coal were produced from the Buckeye powder in that test? A. I couldn't tell the exact number.

4722

Q. Were there more tons produced by Buckeye powder than by du Pont? A. One ton and some hundred pounds.

Q. What do you mean by the test being called off for under-cutting? They had the shot prepared, understand, and after they got the shot prepared, they went to work and under-cut it with the picks, and so it would have taken one-tenth the powder than if it was on the solid, and, therefore, they would have got more coal for a smaller amount of powder.

Q. Then the test had proceeded with the idea of using a keg of powder of each? A. Yes, sir.

Q. And the superintendent called the test off before the keg of du Pont powder had been exhausted? A. Yes, sir.

Deposition of DAVID HARRIS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Harris, where do you live? A. Hanna City.

Q. Illinois? A. Illinois.

Q. How long have you resided there? A. About eight years. 4724

Q. What is your business? A. Coal miner.

Q. How long have you been a coal miner? A. Well, all my life.

Q. How old are you? A. I am 62 years old the 20th of this month, 62 the 20th of this month, so I am past 62.

Q. How long have you been actually engaged in mining coal? A. I started when I was very young, when I was seven years old; that's when I first started to work, in England.

Q. Have you had any experience in mining coal with blasting powder? A. For 51 years I have used blasting powder. 4725

Q. State what kinds of blasting powder you have used during that time. A. I don't know that I can give you all the names.

Q. Just tell us a few you can recall. A. Du Pont powder and Buckeye powder.

Q. Any others? A. Yes, a powder they call—it used to come in wooden kegs—that wasn't du Pont powder, that was a different powder, but I don't remember the name, because I have used all grades of blasting powder.

Q. Where did you use Buckeye powder? A. At Hanna City.

Q. Where did you use du Pont powder? A. We

had been using du Pont powder for pretty much all the time; the company got Buckeye powder there, and we went to using it to give to a test.

Q. You used du Pont powder at the Hanna City mine? A. Yes, sir.

Q. Now, then, describe, in your own way, the use you made of Buckeye powder at the Hanna mine; such experience you have had personally in the use of Buckeye powder. A. In the first place, when we got the powder, I didn't know whether I was going to get good results out of it or bad results, but we got it and used it, and, of course, we had—I had a difference in the first shot or two in using that powder.

Q. About what was that difference? A. The difference was, I put the same amount of powder in in inches to the shot, to my judgment, as I would of the other powder.

Q. You put the same amount of powder; what powder do you mean? A. Of the Buckeye powder; I put the same amount as the other powder.

Q. What is the other powder? A. The du Pont, and I found, when my shots was fired, I had to change powders for the coal it had to work.

Q. Of what kind of powder? A. Of the Buckeye.

Q. How could you tell that? A. My judgment called for that amount of powder, and secondly, I knew that there was a difference in the strength of the powder.

Q. You knew there was a difference, on account of the results? A. After those first two shots, I reduced the quantity of powder.

Q. Of what kind of powder? A. The Buckeye, from my judgment, as I had of the du Pont powder; a shot that would take—my shots was pretty much of the same kind, from two feet six inches to two

foot eight inches of powder, I would get them down to four inches on the du Pont powder.

Q. What powder are you now testifying you cut down? A. I cut down the Buckeye powder, the amount, so as not to have too much powder for the amount of coal.

Q. What was the result of your changed methods? A. Because I knew that the powder was stronger.

Q. I am asking you now, after you cut down the charge of Buckeye powder, what was the result of those shots? A. They worked a good deal better, and kept the coal more in its place where it should be kept to load. 4730

Q. As to the amount of coal, what was the result? A. The amount, it would vary with me, say from four tons to six tons to the shot.

Q. How do you mean? A. To that amount of powder, from that amount of powder.

Q. What was the total amount of tons you got from a keg of Buckeye powder, if you can recall? A. I just couldn't come down to the facts of the matter; I expect we could get the books if we went down on the second floor. 4731

Q. Whereabouts on the second floor? A. To Applegate and Lewis's office.

Q. Have you made any inquiries there for any records? A. No, sir, not yet; I keep a record of all my work I do at home.

Q. Give the testimony to the best of your recollection, as to how many tons of coal you obtained from a keg of Buckeye powder. A. From about 18 to 22 or 23 tons to the keg.

Q. In your use of du Pont powder, about how many tons of coal did you obtain per keg? A. Well, I always reckoned if I got 16 tons to the keg I was doing well, 15 or 16 tons.

4732

Davil Harris—Cross

Q. And you obtained the results you have testified from Buckeye powder, by the use of a considerably less amount of Buckeye powder than of du Pont powder? A. Yes, sir.

Cross examination by Mr. Katzenbach:

Q. Mr. Harris, the miners bought their powder of the operators, did they not? A. Yes, sir.

4733

Q. At a certain price, fixed price per keg? A. Yes, sir.

Q. Between the years 1903 and 1909, what price per keg was charged by Applegate and Lewis for powder? A. \$1.75 was what has been customary for us to pay for powder.

Q. When was the Buckeye powder first used in the mines of Applegate and Lewis? A. I can't really—

Q. At Hanna City? A. —tell you, but to the best of my belief, it has been between six and seven years.

4734

Q. That was then about the year 1907, or before that? A. Somewhere about that time.

Q. It might have been 1906? A. It might have, it might have.

Q. During the time that the Buckeye powder was used in this mine, was there any other powder that was used, or did the miners use Buckeye exclusively? A. No, sir, they had two kinds of powder there.

Q. What kinds were they? A. The Buckeye powder and the du Pont powder.

Q. What kind of powder do they use in the mines now? A. They are using the du Pont now.

Q. A miner, then, could get from Applegate and Lewis, either Buckeye powder or du Pont powder for use in the mines? A. Yes, sir, at the time when they had two kinds there.

Q. How were the miners paid during the years 1906 and 1907 by Applegate and Lewis? A. They were paid by the ton.

Q. That is to say, their wages were based on the number of tons of coal mined? A. Yes, sir.

Q. By each miner? A. Yes; whatever tons they dug they got paid for.

Q. How many miners did you have at the Hanna City mines of Applegate and Lewis in the years 1906 and 1907? A. At that time it would vary, sometimes we wouldn't have many men in the mines to work, and other times it would increase.

4736

Q. What was the lowest number and the highest number that you can recall? A. It has been down as low as between 20 and 30, anyway.

Q. And how high? A. About 46 is about the highest it would reach.

Q. From 20 or 30 to 46? A. Yes.

Q. While you were using Buckeye powder, did you see miners that were using du Pont powder in the mines? A. Sure.

Q. Were there more using du Pont powder than Buckeye powder? A. I can't tell you that; I know what I was using.

4737

Q. You can't tell that? A. No.

Q. You do know that du Pont powder was being used in the mines right along by the miners? A. Yes, sir.

Q. Who was the mine manager of Applegate and Lewis in the Hanna City mines in the years 1906 and 1907? A. I believe William—no, Bob Morton, at that time.

Q. By "Bob" you mean Robert? A. Yes, sir—we call him "Bob" for short; we don't go to any nice names.

Q. Do you know whether Robert Morton is a brother of Andrew Morton? A. Yes, sir, he is.

4738

*David Harris—Re-direct**Redirect examination by Mr. Abbott:*

Q. Mr. Harris, you stated that \$1.75 was the customary price which the miners were paid for powder which was furnished by them? A. Yes, sir.

Q. By "customary price" what do you mean; is that a rule? A. A rule?

4739 Q. Is it a rule? A. That's a rule; the operators adopt among themselves I suppose, that the price of the powder bought through the mines at different places is the same.

Q. Whatever powder you bought you had to pay a fixed price based on this rule? A. Yes.

Q. No matter what it costs the operator? A. No, sir.

Q. You spoke about Applegate and Lewis having used du Pont powder after having ceased to use Buckeye powder; what did you mean by du Pont powder, in that connection? A. Why—

Q. You stated they were now using du Pont powder? A. Du Pont powder.

4740 Q. Have they used any other powder since 1908, except du Pont powder? A. Yes, sir.

Q. What other powder is that? A. They have used Buckeye.

Q. Since 1908? A. Since 1908, to the best of my ability.

Q. Where is that Buckeye powder made that you have testified they have used since 1908, if you know? A. From what we understand, it is made over here to Edwards' Station.

Q. Does it go under the name of Buckeye powder at this time? A. I don't know whether it goes under the name of that.

Q. In other words, the powder you have in mind as having been used by Applegate and Lewis Coal Company since 1908, is the powder made at Edwards, Illinois? A. Edwards, Illinois.

Q. Do you know of a powder known as Western powder? A. Yes, sir.

Q. Where is that made? A. I suppose over at the Buckeye mills.

Q. Is that the powder you speak of as Buckeye? A. Yes, sir, the same powder under two names.

Q. Did you use that powder? A. Yes, sir.

Q. Has it been satisfactory or otherwise? A. Yes, sir.

Q. You said "Yes, sir;" I said, has it been satisfactory or otherwise? A. Satisfactory to me; I don't know——

Q. That's all.

4742

Deposition of DAVID S. THRUSH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Thrush, where do you live? A. Hanna City, Illinois.

Q. How long have you resided there? A. About 25 years.

Q. What is your business? A. Miner.

Q. How long have you been in the mining business? A. About 25 years.

Q. How old are you? A. 40 years old.

Q. And where have you been mining during that time? A. I have been mining in Danville, Hanna City, Farmington, and I have been in Springfield.

Q. How long have you been in the mining business at Hanna City? A. I presume about 12 years.

Q. In your work as a miner, have you had any experience in the handling of blasting powder? A. Yes, sir.

4743

4744

David S. Thrush—Direc

Q. I understand you have been mining coal all this time? A. Not all this time; there was part of the time that I wasn't.

Q. In the use of blasting powder, what kinds of powder have you made use of? A. What kind?

Q. What kind? A. I used the du Pont and the Western powder.

Q. Du Pont and Western? A. Du Pont and Western, and Miami powder; I have used, I expect, most every kind.

4745

Q. Is there any other kind of powder that you can mention at this time? A. I used Lafin & Rand.

Q. When you stated you had used Western powder, what did you have reference to? A. We call Buckeye powder Western powder.

Q. You meant Western as Buckeye? A. Yes, sir.

Q. When did you first begin using Buckeye powder? A. The first I ever used that was six years ago, I think, or seven.

4746

Q. And where was that used? A. Hanna City.

Q. What mine? A. The Hanna City Coal Mine.

Q. Owned by what company? A. Applegate & Lewis.

Q. I will ask you to state what your experience has been in the use of the various powders which you have testified you have used, as to the results obtained from the use of Buckeye powder. A. I got good results from Buckeye powder.

Q. I will ask you to recall, if you can, Mr. Thrush, any particular time when you used Buckeye powder; the first time, we will say? A. In 1906.

Q. 1906? A. Yes, sir.

Q. Now, will you state under what circumstances you used it at that time? A. We used it to blast coal with.

Q. State any other time when you used Buckeye powder. A. I used it since that time.

Q. How long after that? A. Probably for a year or two afterwards; I used it right along.

Q. You began using it in 1906? A. Yes.

Q. And then you used it right along? A. Yes, sir.

Q. Did you ever, at any time, attempt to keep track of the results obtained from the use of Buckeye powder? A. Yes, sir.

Q. When was it? A. When I first began to use it. 4748

Q. Now, then, state what the results were which you obtained from the use of Buckeye powder, with respect to the amount of coal produced by a given keg? A. I got better results out of it, and a good bit better grade of coal, and from three to five tons to the keg more with it.

Q. Than what? A. Than I had been with the du Pont.

Q. Was that your uniform experience? A. Yes, sir.

Q. It was? A. Yes, sir. 4749

Q. Did you, at any time, ever make a comparative trial of Buckeye powder with any other powder? A. Only with my experience and the partner that worked alongside of me; he used one kind and I used the other.

Q. What kind did he use? A. Du Pont.

Q. What kind did you use? A. Buckeye powder.

Q. What was your experience, working side by side? A. I thought I made a little gain on him; I thought I made from three to five tons more than he did.

Mr. Katzenbach: That is objected to as an opinion and not a fact.

4750

David S. Thrush—Direct

A. That is a fact. You can go down and get the books on the second floor.

By Mr. Katzenbach:

Q. Then, these records are embodied in bulletins or books? A. Certainly, they are; and they are embodied in bulletins.

4751

Q. You may state what results you obtained in this trial you have testified to, with reference to the amount of coal you produced, and the amount of coal your partner produced. A. It made better coal, more lump coal.

Q. With reference to the amount of coal produced, what was the result? Which one of you got the most coal, if there was any difference? A. We thought I did.

Q. How did you arrive at that conclusion? A. We kind of kept track of it.

Q. Did you measure it? A. It's weighed, the coal is weighed.

Q. How is it weighed? A. Why, it's weighed.

Q. How? A. It's weighed with scales.

4752

Q. Who loaded it? A. The man that digs it.

Q. You kept track of the amount of coal received from a given shot? A. Yes, sir.

Q. Your partner, did he do the same? A. I want to answer that question this way; I don't come here to make a play one way or the other; I wanted the thing as clear as I could; if we were working partners, you would know whether you thought I was doing more than you was, wouldn't you?

Q. Yes. A. That's a fact, and that's the way we started it up.

Q. How long were you working side by side with your partner, while he was using du Pont and you Buckeye powder? A. Probably for a couple of months.

Q. What were the results obtained during this

entire period; were they different from what you have stated? A. It seemed to be about the same; he went to using the powder too, part of the time.

Q. Do you know anything about a certain test, a certain official test that was made by the Applegate & Lewis Coal Company with reference to Buckeye powder and du Pont powder? A. Only just from hearsay.

Cross-examination by Mr. Katzenbach:

4754

Q. Mr. Thrush, then during the time that you say you and your partner were at work side by side, he used Buckeye powder part of the time during this test, didn't he? A. Yes, sir.

Q. Who furnished the powder for the miners in this mine of Applegate & Lewis? A. Applegate & Lewis furnished it. We got to buy it, you understand.

Q. The miners bought the powder? A. Yes, sir.

Q. In this mine, how were the miners paid; what was the basis of the pay? A. So much a ton.

4755

Q. Both du Pont and Buckeye powders were used in this mine? A. Yes.

Q. How many men were using Buckeye powder? A. I couldn't tell.

Q. Can you estimate it? A. No.

Q. Well, approximately? A. Well, you wouldn't take a guess awhile ago, and what is the use of my trying to give one now.

Q. There were more miners that used du Pont powder than Buckeye powder? A. I couldn't say.

Q. You were there in the mine? A. Yes, sir.

Q. You observed what powder was being used?

A. I observed what powder I was using myself.

Q. You don't know what other powder was used, and by whom? A. No, I couldn't say.

4756

Seth Whites—Direct

Q. Did you observe du Pont powder being used by the miners? A. Yes; I couldn't help it; it's an evident fact.

Q. That is a fact? A. Yes, sir.

Q. Who was your partner that you have spoken of? A. Herman Swardinski.

Q. Where is he living? A. Out on the Plank Road.

Q. When did you last see him? A. This morning.

4757 Q. Is he here in Peoria? A. I think so.

Deposition of SETH WHITES, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Where do you live? A. Hanna City.

Q. Illinois? A. Yes, sir.

4758 Q. What is your business? A. My business is a coal miner.

Q. How long have you lived at Hanna City? A. Eight years.

Q. How long have you been a coal miner? A. I have been working in that mine for about eight years.

Q. Were you or not, a coal miner before that, or what was your business before that? A. I was a farmer before that.

Q. In your experience as a coal miner, have you ever handled powder? A. Yes, sir.

Q. What kind of powder have you handled? A. Black blasting powder.

Q. Of what make? A. Du Pont and Buckeye powder, and Western powder, here of late.

Q. When did you first begin having Western powder, if you know? A. That has been long ago; I don't know the exact date, within the last six months, or something like that.

Q. State whether or not you have handled any other powder except the two you have just mentioned. A. No, sir, I haven't handled any other, that I know of.

Q. Where did you handle the Buckeye powder that you have testified you have used? A. The Hanna City mines.

4760

Q. When was it? A. 1907, about, the first of 1907.

Q. How long did you continue to use Buckeye powder? A. I used it as long as I could get it, till the Western powder came in, then I handled that the rest of the time.

Q. Did you, during that period, handle any other kind of powder except Buckeye powder? A. Yes, sir.

Q. While using Buckeye powder? A. Once in a while I got a keg of du Pont.

4761

Q. So you handled both powders at the same time? A. Yes, sir.

Q. State, in your own way, just what were the results you obtained from the use of Buckeye powder, with reference to the amount of coal which was produced per keg. A. What do you mean—the amount of tons each keg produced?

Q. That's right. A. Out there I got from 18 to 24 tons out of a Buckeye keg.

Q. State about how many tons of coal per keg you obtained from the use of du Pont powder. A. Well, about 15 or 17 was the best; 17 was as good as I could get.

Q. Did you use both powders under the same general conditions? A. Yes, sir.

Q. The same conditions? A. Yes.

4762.

Seth Whites—Cross

Q. Now, the facts you have just testified to with reference to the results of the use of Buckeye powder and du Pont powder, were they your general experience, or do you refer to any special occasion? A. For general reasons, it was a paying proposition, that was all.

Q. You found the results to be about uniform at all times when you used either grade of powder; is that correct? A. Yes, sir.

4763

Q. State what was the result of your general experience in the use of Buckeye powder and du Pont powder, with reference to the amount of coal per keg which was produced by each of those powders. A. My general experience would be, it takes less of that powder for the shot. You get more coal out of a keg of Buckeye than out of a keg of du Pont, was the reason I used it.

Q. And the figures you have already stated, is the difference which you have in mind? A. Yes, sir.

4764 *Cross-examination by Mr. Katzenbach:*

Q. When did you first use Buckeye powder, what time? A. About the first or last of January, 1907.

Q. How long did you continue to use Buckeye powder in the mine at Hanna City where you worked? A. The rest of that spring; as long as they kept it there I used it.

Q. Did they stop keeping it? A. No, they didn't stop keeping it—I don't think they did.

Q. While Buckeye powder was being used, what other powder was being used? A. Du Pont.

Q. How many miners were there in the mine working, in the spring of 1907? A. Somewhere in the neighborhood of 60 or 70, somewhere around there; I don't know the exact number.

Q. A miner could ask the operator for just whichever powder he wanted, could he not? A. Sure.

Q. And both powders were the same price to the employee or miner? A. Yes, sir.

Q. During the spring of 1907, did you see any of the miners using du Pont powder? A. Yes.

Q. How many miners used du Pont powder in the mines? A. I don't know; I never kept track of it.

Q. Well, approximately 50 per cent., or more than that? A. I don't know just exactly. 4766

Q. Well, how many do you think, to the best of your recollection? A. Probably half of them.

Q. About half used du Pont? A. Yes, I think so.

Q. During the spring of 1907, how were the miners paid by Applegate and Lewis, on what basis? A. How they were paid?

Q. Yes. A. They were paid every two weeks.

Q. What was the basis of their wages? A. Tonnage.

Q. It was tonnage? A. Yes, sir, by tonnage.

Q. In other words, the men that mined the most tons of coal got the highest wages? A. Yes, sir. 4767

Q. What was the price per ton during 1907, that you were paid? A. 63 cents, I believe.

Redirect examination by Mr. Abbott:

Q. Is the price of coal regulated between the miners and operators, by agreement? A. Yes, sir.

Q. Is that agreement in writing, that you know of? A. Sure, it's in writing.

Q. Was it in writing at the time you had in mind in answer to questions of Mr. Katzenbach?

A. You mean the agreement for the price?

Q. Yes. A. Yes.

4768

William D. Evans—Direct

Q. There is always an agreement between the operators and the miners regarding the price of coal? A. Yes, sir.

Deposition of WILLIAM D. EVANS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

4769

Q. Mr. Evans, where do you live? A. 1908 South 7th Street, Springfield, Illinois.

Q. Springfield? A. Yes.

Q. How long have you lived in Springfield, Illinois? A. About, I don't know, just about forty years.

Q. What is your business? A. Coal miner.

Q. How long have you been a coal miner? A. Thirty-three years.

4770

Q. Where have you been employed during that time? A. I worked twenty-seven years at the Woodside mines, between twenty-seven and twenty-eight years, and I worked a little in the Peoria district last summer.

Q. In your experience as a coal miner have you used black blasting powder? A. Yes, sir, altogether.

Q. What kinds? A. We had Buckeye and Miami, and Laffin & Rand. I don't know, I guess every kind that was ever made for blasting coal.

Q. Did you ever use any du Pont powder? A. Principally du Pont.

Q. In your use of Buckeye powder I wish that you would state what results you obtained from it as compared with the other kinds of powder which you say you have used. A. Well, I found that it cut the coal better. I used about one hole

less in every four of the Buckeye powder. It made better coal and it worked the dirt better, and it didn't affect the roof any. I used between eight and ten kegs of it.

Q. You stated that you saved one hole in every four? A. Yes, sir.

Q. Describe just what you mean by that? A. Well, three holes done the work of the Buckeye powder that I was using four holes to accomplish the same kind of work. It cut the coal up and down where the other powder didn't and you had to use that extra hole to keep the bottom squared up. 4772

Q. Extra hole with what powder? A. With du Pont powder. You had to use the fourth hole all the time to keep the bottom squared up.

Cross-examination by Mr. Katzenbach:

Q. Mr. Evans, how many kegs of du Pont powder have you used during your life? A. I don't know how many thousand.

Q. How many kegs of Buckeye powder have you used? A. I used, well, between eight and ten. It would be safe to say I got nine. 4773

Q. In what mine did you use this powder? A. The Woodside.

Q. How many miners were employed in that mine? A. Well, at that time I would judge about two hundred, or a hundred and fifty at that time.

Q. A hundred and fifty? A. Yes, sir.

Q. This powder was supplied to you by the operators? A. Yes.

Q. And all the miners could use Buckeye powder if they wanted to? A. No, sir. All? No.

Q. Who gave you this powder to use? A. Why, there was a hundred kegs of it brought there?

4774

William Coyne—Recalled—Direct

Q. Who got it? A. The company, and when you ordered your powder you could call for this Buckeye powder and they would give you a keg of Buckeye powder. There was no test made, or anything of that sort, at the time.

Q. You could get it if you wanted it? A. Yes, sir.

Redirect examination by Mr. Abbott:

4775

Q. You were asked if all the miners could use Buckeye powder and you said they could not. A. No, there wouldn't have been enough to give them a keg apiece.

Q. They didn't continue to buy Buckeye powder and keep it on hand for the mines? A. No, they refused to.

4776

WILLIAM COYNE, recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. Abbott:

Q. I show you Plaintiff's Identification 1248 and ask you to look at it and state whether or not that is a document presented by you the last time you were upon the stand? A. (After examination): It is.

(The paper referred to received without objection and marked Plaintiff's Exhibit No. 1248).

Q. Now will you state how that document was prepared? A. The records of the sales department were searched to find the dates and the names of

the customers to whom 95c prices were authorized between May 5th, 1905, and October 14th, 1907.

Q. Did you make that search yourself? A. No, sir.

Q. By whom was it made? A. I think there were three or four people working on it.

Q. Well, it was made under your direction? A. Yes, in my department.

Q. And by persons who are acquainted with your books and know how to get the facts that you desired to have; is that correct? A. Yes.

4778

Q. I notice, Mr. Coyne, that there are notations under the head of remarks in a column called "Remarks," reading as follows, as a sample: "S. B. Min." giving the date, and so forth. What does "S. B. Min." mean? A. Sales board minutes.

Q. Yes; where are those minutes kept? A. In Wilmington.

Q. Under whose charge and control? A. Mine.

Q. How long has the Sales Board kept minutes? A. Of my own knowledge I could say from 1905 on and I think—

Q. Well, have you any knowledge upon it except your own, your investigations of the affairs of your office lead you to know whether there are other minutes previous to that date? A. I think that the minutes were always kept by the sales board ever since its existence.

4779

Q. Now, under whose charge, in whose care are those minutes kept? A. In our sales department file room.

Q. Can you give me the name of the officer who has charge of those minutes? A. Yes, I think Mr. Kerr has.

Q. He would have charge of all the minutes since the organization of the sales board, would he, down

4780

William Coyne—Recalled—Direct

to the present time? A. As long as—I think he would have them since they started keeping them.

Q. Well, do you have control over those minutes yourself? A. Yes.

Q. Could you produce them of your own authority or would you have to get somebody else's authority to produce them? A. I could produce them of my own authority if it was proper to do it.

4781

Q. Well, now will you state how those minutes are prepared, that is to say, does the sales board have regular meetings from time to time of which minutes are kept? A. Yes.

Q. They have a secretary? A. Yes.

Q. Who was the secretary during the period that you have indicated here? A. I cannot recall.

4782

Q. I will ask where there are blanks that occur under this heading does that indicate that there were no minutes of those orders? A. Those notations under the head of "Remarks," as I read them, have no relevancy to the 95 cent price. For example, the first one, page 1, in the sales board minutes of September 18, 1905, says, "Lists Contract dated August 29, 1905, for one year." A. I don't know why they happened to put that information on there but it has no reference to a 95 cent price.

Q. Then were any of these charges authorized by the sales board or action authorized by the sales board or taken to the sales board? A. I think all of them were.

Q. These minutes as indicated on here, as you have stated, relate to the time when the contract was issued that was entered into with these people? A. No. As I read it, each carries its own story. One has reference to a contract and another a dollar price there; where we authorized a 95 cents we got a dollar (indicating). There was something exceptional about that particular customer that caused that notation to be made.

Q. Now, as I examine these hastily it appears to me that they all relate to the date of the contract except one. Will you point out others if there are any others in relation to any other subject? A. This one simply says—to authorize a one dollar price.

Q. That particular one. But do you find anything else that bears on any other matter except the matter of the contract? A. Except that one, it appears they all have reference to a contract that was apparently entered into by us with the customer.

4784

Q. Is it necessary to secure authority from the sales board for the issuing of contracts or making of contracts in all cases? A. Any special price—

Q. When I say "is it," I mean "was it," necessary during this period that is indicated here—The period from 1904 when you entered the employ of the company down to 1908? A. Practically every price had to be approved or authorized.

Q. And every contract? A. Every contract, yes.

Q. Do you know a man by the name of David S. Brewster? A. Yes, sir.

4785

Q. Was he ever in the employ of the du Pont Company? A. I think Mr. Brewster was in the employ of the company in 1904 when I came with them.

Q. How long did he remain with the company? A. Two or three years afterwards, I think; I am not certain about that.

Q. What position did he occupy in the office of the company at Wilmington? A. I don't know what his position was in Wilmington excepting he was connected with the sales department.

Q. Do you know whether he was at the head of what was called the competitive division? A. I do not.

4786

William Coyne—Recalled—Direct

Q. You have such a division, have you? A. We have the statistical division, as we call it.

Q. But was it not known as the competitive division in 1905? A. Yes, sir.

Q. Since then it has been merged into the statistical division, which is now in charge of Mr. Simpson? A. Yes, sir.

Q. Did Mr. Simpson succeed Mr. Brewster? A. I could not say definitely, Mr. Abbott, about that.

4787

Q. Have the duties or the responsibilities, you might say, of that statistical division changed in any manner since the time it became known as the statistical division? A. I have intimate knowledge of it only from July, 1907.

Q. Previous to 1907 it was, you say, known as the competitive division, and since that time as the statistical division. Was there any change in the responsibilities of the officer in charge of that division after that period when the name was changed? A. No.

4788

Q. In other words, it is now, and has been ever since 1907, really the competitive division. All competitive subjects are referred to that division, are they not? A. Yes.

Q. Do you know anything about a report that was prepared by Mr. Brewster just previous to the making of this 95 cent price? A. No.

Q. Did you ever hear of any such thing as that in connection with your duties? A. I have no recollection of hearing of it.

Q. Have you any personal knowledge of your company's affairs which immediately preceded the issuance of this 95 cent price? (Objection sustained).

Q. Have you any knowledge of any steps that were taken by any of the officers of your company, or of the sales board in particular, in reference

to an investigation concerning the competitive conditions in the Central States just previous to the time when this 95 cent price was issued?

Mr. Katzenbach: I object to that question, because it contains the same vice—"when this 95 cent price was issued."

The Court: Yes, and another question becomes involved in this. Whether there was a general issuance of a 95 cent rate.

Mr. Abbott: The price was issued, undoubtedly. 4790

The Court: You might refer to this 95 cent rate.

Mr. Abbott: But that limits it.

Q. Do you know anything about a 95 cent price outside of what is shown by this document? A. For what period?

Q. Well, for any period? A. That is pretty general.

Q. Well, then, I will say from the time you began your employment with the du Pont Company at Wilmington and September 15, 1908? A. There were some 95 cent prices made in Pennsylvania, and as I recall it a 95 cent price obtained in the Hazelton District for a soft grain powder; but the 95 cent prices started with that list in May, 1905, and a few were given in May and a few more in June so on each succeeding month until the end of the period. There was not any general 95 cent price. 4791

Q. Then this list contains every customer or every person to whom the 95 cent price was made; is that correct? A. In the territory that Mr. Waddell operated in, yes, sir, as far as the record goes.

Q. This does not purport to cover any 95 cent

4792

William Coyne—Recalled —Cross

price that was made in the Hazelton district or the Pennsylvania district. Is that right? A. That is right.

Q. Now, then, can you tell me this: The first date shown here is May 5, 1905, upon which a 95 cent price was made. Is that correct? A. I think so, yes.

4793

Q. Can you tell me what were the conditions in the affairs of your company just preceding the issuance of this 95 cent price on May 5, 1905, so far as an investigation of the competitive conditions in this district are concerned? A. Only in a general way, Mr. Abbott. I had not examined the records for all of the details, but I do know that prices had been forced down from a dollar, I will say from memory from \$1.20 to \$1.15 or \$1.10 or \$1.05 and to a dollar and had been steadily going down for a year, because of competitive conditions, new mills starting up and taking our trade; and we arrived at the 95 cent price in the orderly manner that we arrived at the dollar price.

4794

Q. I see. What I am trying to get at is this: Did your company authorize any person or persons to make an investigation of competitive conditions in this district and make any report to you on which you took action at that time? A. Not to my knowledge, no special action in reference to making a 95 cent price.

Cross examination by Mr. Katzenbach:

Q. Mr. Coyne, the document that you have prepared at the request of Mr. Abbott and have submitted here today and which has been marked Plaintiff's Exhibit 1248 is the authorizations of the sales board of the du Pont Company from May 5, 1905, down to October 14, 1907, of a 95 cent. price of powder, as I understand it? A. Yes, sir.

Q. When you speak of the sales board, is that the sales board of the du Pont Company that you refer to? A. Yes.

Q. And that sales board, I think you have testified as to how it was composed heretofore, have you not? A. Yes.

Q. In effect, that was that there was no one else a member of the sales board except the representatives of the du Pont Company, that there were no members of any other powder companies that sat with that board during this period that you have mentioned? A. That is correct. 4796

Q. And that sales board was composed of yourself as a director of sales, and your predecessor, and the assistant directors of sales, and other members were the du Pont Company, were they not? A. Yes.

Q. Now, referring to those authorizations which you have referred to as being authorizations of a 95 cent price, will you state what territory they covered? A. They covered the States of Ohio, Indiana, Illinois, Kentucky, Missouri, Kansas.

Q. That territory that was comprised in what Mr. Waddell has specified as Buckeye territory? A. Yes. 4797

Q. And that was for business that emanated from your Chicago, St. Louis, Kansas City and Cincinnati offices, was it not? A. Yes.

Q. Was there any authorization of any 95 cent price to all customers of the du Pont Company? A. No.

Q. Or those that the du Pont Company might have desired as customers or to users of this class of explosives generally? A. No.

Q. Now then, when you say that there was a 95 cent authorization made to any user or to any customer, will you just state what the sales board

4798

William Coyne—Recalled—Cross

did in making an authorization of a 95 cent price to any user of powder? A. Of course, I cannot be specific as to any specific customer.

4799

Q. No, but just generally? A. The general practice was for the assistant director of sales in charge of the branch office territory that made the application for the price to appear at the sales board with his reasons why a 95 cent price was necessary. He got those reasons either orally or in writing from his branch office, possibly from salesmen he might see, and if the necessity for the price is made apparent to the sales board, they, as a rule, authorized it. Many times, of course, they did not feel that it would be necessary to reduce the price to meet competitive conditions.

4800

Q. Then I understand that the assistant director of sales in a particular territory, for instance, we will say in the State of Illinois, would make a statement to the sales board that his competitive conditions in reference to such and such a customer were so and so, as for example that that customer had been quoted a price of 95 cents, or a lower price than 95 cents, and that information would be given to the sales board sitting as a board, and they would determine whether this 95 cent price authorization would be made or not; is that correct? A. Yes.

Q. So that in every one of these instances of the 95 cent authorization the sales board acted independently upon that particular case after the receipt of information from your representatives as that information would be in a general way communicated by the assistant director of sales in that locality? Is that correct? A. Yes.

Q. In making up any of these 95 cent prices that are recorded upon this Exhibit 1248, was there any action at any time ever taken upon the authorization of a 95 cent price as directed against the Buckeye Powder Company exclusively? (Objected to.)

By the Court:

Q. Were you present during all this time? A. In a majority of cases.

The Court: Of course this witness cannot speak from hearsay.

Mr. Katzenbach: Not at all, not at all.

By Mr. Katzenbach:

4802

Q. You were a member of this sales board during the years 1905, 1906 and 1907? A. Yes.

Q. In any meeting of the sales board you attended during the years 1905, 1906 and 1907, did you hear any action taken by that sales board or participate in any action taken by the sales board, by act or word, in reference to the Buckeye Powder Company and its competition other than as a general competitor, with other powder companies in that locality? (Objection overruled.) A. No.

Q. Now, Mr. Coyne, will you state how many users of powder in this territory that you have described the 95 cent price was authorized to as shown upon this list? A. Approximately it totals up 445.

4803

Q. 445. Now, then, how many of those authorizations were made in the year 1905?

Mr. Abbott: Does not the list speak for itself?

The Court: Yes, but it may save time. It speaks for itself only in one sense. Somebody would have to bring it out anyway.

Q. Yes. And we might as well bring it out by the man who made it. A. I would have to refresh my memory on that.

4804

William Coyne—Recalled—Cross

Q. You have a notation showing that? A. I have only one of these statements in my pocket.

Q. How many authorizations were made in 1905? A. 98.

Q. And how many in 1906? A. 209.

Q. And how many in 1907? A. 93.

Q. When you state that an authorization of 95 cents was made to a customer does that mean that you sold that customer at that price? (Objection overruled.) A. No indeed.

4805

Q. Of the authorizations that you have referred to, the 445 authorizations made during the years 1905, 1906, and 1907, as set forth in Exhibit 1248, please state the number of companies to whom that price was authorized whose trade you failed to obtain. (Objection overruled.) A. 144.

Q. Out of that number, of how many did you lose the trade at this 95 cent authorization, fail to sell after it was made?

4806

Q. How many of your customers that you failed to sell to after you made the authorization, that had previously been your customers? A. Fifty-two.

Q. Then how many of these 445 that had been customers prior to the authorization of the 95 cent price and to whom you had sold prior to that authorization did you obtain by the 95 cent price? (Objection overruled.) A. 154.

Q. 154 of your own customers you retained at that price. In making that authorization of 95 cents in each one of those individual instances did you in any instance of that kind act upon information received by the sales board at the time that this matter was under consideration of a price lower than 95 cents being made by a competitor? (Objection overruled.) A. We had frequent reports of lower than 95 cent prices.

Q. Did the sales board to your knowledge, during the years 1905, 1906 and 1907, ever make a price lower than the price that you had information of and which information was being acted upon by the sales board at that price by a competitor?

Q. Based upon your own knowledge of what transpired at the Board, did the duPont Company ever make a lower price than that which they had been informed the competitor had made in that particular locality? A. Not knowingly. We may have been deceived in one or two cases, but we never felt it necessary to go lower than any competitor.

4808

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott:

Q. Who were the 144 persons to whom you made the 95 cent price and did not make any sales; have you a list of them? A. I have a list in Mr. Katzenbach's office, in my grip.

Q. Will you produce that list? A. I can produce it in five minutes if I can bring my grip over here.

4809

Q. Who were the names of the 52 persons you failed to sell to? A. I can give that too if I have my grip.

Q. And the 152 customers you retained by that price? A. Yes.

Q. Will you produce those lists? A. I can read the names off to you because I have them marked.

Q. If you have a list prepared which you have checked up I would like to have that list so as to save time? A. Very well.

Q. From whom did you get the information upon which the action taken by the trade with reference to making any particular price was had? A. You mean from whom the board got the information?

4810

William Coyne—Recalled—Redirect

Q. Yes; whom did you get the information from?

A. From the branch office manager.

Q. Where did they get information? A. First hand themselves sometimes, and other times, most frequently I presume, from their salesmen in the field.

Q. Were those reports made to your office? A. Copies of the reports came to our office.

Q. What form are they in? A. Trade reports largely.

4811

Q. Trade reports. Will you state what correspondence and what trade reports contained the information upon which the action of the Board was based? Can you do that? A. I don't quite understand that.

Q. I want to know now the particular reports upon which you based that action when you made your 95 cent price.

Mr. Katzenbach: That is, to each individual?

4812

Mr. Abbott: To each particular customer, when you made your 95 cent price for each particular person named in this list.

A. State that again, please. I don't quite understand it.

Q. Is not the question clear? A. I would like to hear it again.

Q. You stated on your cross-examination by Mr. Katzenbach that you based your 95 cent price in every case upon some information or report which had been made to you, and what I am now trying to get at is the particular information upon which you based your particular action. In other words, I want to know exactly who it was and what was the report that was made to you. A. Well, I would have to get that from the record.

Q. Yes. Well, now, is that a large amount of information or is it a small amount of information?

A. It involves a search in our files all through that period, and they have been so robbed for the Government suit and this suit that we are hardly able to say today what we can produce or what we cannot produce.

Q. You have not produced any letters or anything from any of your general agents in this case, have you? A. I do not recall any, no.

4814

Q. As a matter of fact, have you examined recently any of your records to know whether or not you based any of the action relative to the 95 cent price upon any particular reports which were in your possession? A. We have refreshed our memory from such records as we could find, yes.

Q. Then, can you tell me of any particular person named on this list of 95 cent prices, concerning whom you have made an investigation of the reports upon which that price was made, recently?

A. Yes, I can tell you a few, I think, although not all of them of course, and may be not any appreciable percentage of them. That information is in my grip also. I remember one or two of them but they are so far back that I would rather testify from the record absolutely.

4815

WILLIAM COYNE, (recalled) for the Plaintiff and testified as follows:

Direct examination by Mr. Abbott:

Q. When you left the stand the other day you had some lists, I believe, with reference to various matters in connection with the 95 cent statement.

4816

William Coyne—Recalled—Direct

Have you those lists with you at the present time?

A. Yes, sir.

Q. Will you produce them? (Witness produces list.) Will you indicate what this first one is, headed N. O. ? A. That is a list of the trade that our 95 cent authorization did not interest.

(The same was marked Plaintiff's Exhibit 1359.)

4817

Q. You say you were not able to get any business of these people on the 95 cent rate? A. Yes, sir.

Q. Did they make any answers to the offers which you made them? A. I presume they did.

Q. You do not know what their reason was for declining to do business with you? A. They had a lower price or the same price—

Q. Do you know that to be the fact? A. Only from my general knowledge of the powder business, that if we quote equal prices or lower prices we get a great deal more—

4818

Q. Then you really don't know that except from general information and through your general knowledge? A. That is my understanding.

Q. That is purely guess-work, is it not? A. Oh, no.

Q. Have you any facts, written or otherwise, upon which to base that statement? A. I have not any facts with me, but if necessary to produce them, I could.

Q. You can produce the evidence? A. Yes, sir.

Q. Are you sure you can? Isn't that merely an assumption on your part, Mr. Coyne? A. No.

Q. You know positively that is the reason they refused to do business with you, because somebody made them a lower price? A. No, I didn't say that.

Q. What did you say? A. The same—or a lower price.

Q. You stated a week ago that you knew what the facts were. A. I said from my general knowledge of the powder business I knew that among that 140 or 150-odd names there were a great many of them we did not get, and I could show we did not get them because they had the same or a lower price from competitors.

Q. You say a great number. Will you take this list and show the particular ones you did not get because they had a lower price? A. I cannot do that. That is 1905.

4820

Q. Then, as a matter of fact, you do not know anything about it at this time and it is a mere matter of guess-work? A. It is more than guess-work.

Q. Then please point out those on there you do know about. If you know you must know as to some of them. A. I cannot point out any particular one.

Q. I show you this next table, B. and A., and ask you to state what that is? A. The trade we held under the 95 cent authorization, that we sold "before and after."

4821

(The same was marked Plaintiff's Exhibit 1360.)

Q. I show you this other statement and ask you to state what that is a statement of? A. That is trade we lost; trade we had at the time we made the authorization and lost in trying to get 95 cents.

(The same was marked Plaintiff's Exhibit 1361.)

Examination Concluded.

Thereafter certain documents were received in evidence by the court as plaintiff's exhibits, which said documents were marked in plaintiff's iden-

1607

4822

Jonathan Haskell—Direct

tification P-3 and known Petitioner's Exhibits in the case of United States Government v. E. I. du Pont de Nemours & Co. Equity Case No. 280, in the United States District Court for the District of Delaware as follows:

Government exhibits 101-A, 101-B, 102, 102-C, 102-D, 103, 104, 109, 110, 116, 117-A, 117-B, 117-C, 117-D, 117-E, 117-F, 117-G, 117-H, 117-I, 117-K, 117-L, 117-M, 117-N, 117-O, 117-P, 117-R, 118, 118-A, 118-B, 118-C, 118-D, 118-H, 118-I, 118-J, 118-K, 118-M, 118-N, 118-O, 118-P, 118-Q, 118-R, 118-S, 118-V, 118-W, 118-X, 118-Y, 118-Z, 118-AA, 118-BB, 118-CC, 118-DD, 122, 122-A, 122-B, 122-C, 122-D, 122-E, 122-F, 122-G, 122-H, 122-I, 122-J, 122-K, 123, 124, 124-A, 124-B, 124-C, 124-D, 124-E, 124-F, 124-G, 124-H, 124-I, 124-J, 124-K, 124-L, 124-M, 124-N, 124-O, 124-P, 124-Q, 124-R, 124-S, 124-T, 125, 125-A, 125-B, 125-C, 125-D, 125-E, 125-F, 125-G, 125-H, 125-I, 125-J, 125-K, 125-L, 125-M, 125-N, 125-O, 125-P, 125-Q, 125-R, 126, 126-A, 126-B, 126-C, 126-D, 126-E, 126-F, 126-G, 126-H, 126-I, 126-J, 126-K, 126-L, 126-M, 126-N, 127, 128, 128-A, 128-B, 128-C, 128-D, 128-E, 128-F, 128-G, 128-H, 128-I, 128-J, 128-K, 128-L 129.

4824

JONATHAN HASKELL, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. You reside, I believe, in State of New Jersey?

A. I do.

Q. At what place? A. At Middletown Township.

Q. Have you any business that calls you elsewhere; I mean do you have a business office elsewhere than where you reside? A. I have an office in New York City and also an office in Wilmington.

Q. What is the business you are engaged in at the present time? A. Vice-President of the E. I. du Pont de Nemours Powder Company.

Q. And how long have you been such? A. Since the company was formed, I think in 1903.

Q. Previous to the time that you became an officer of that company what was your business, as far back as 1890? A. In 1890 I was general manager and treasurer of the Rochester & Pittsburgh Coal & Iron Company. In 1892 I became vice-president and a month later president of the Rapauna Chemical Company and the Hercules Powder Company. In February, 1895, I became president of the Laflin & Rand Powder Company. I retained the presidency of the Laflin & Rand Powder Company until its dissolution.

4826

Q. And when was that? A. I don't remember. Last year some time.

4827

Q. During the time that you were president of the Laflin & Rand Powder Company, or just previous to that time, when you entered the powder business or the explosives business, in what line did you first engage? Was it blasting powder business? A. In high explosives.

Q. How long did you continue to be engaged in that class of the business before you entered the Laflin & Rand Company as its president? A. I was president of the Rapauna Chemical Company and the Hercules Powder Company until they were dissolved.

Q. They were exclusively high explosives companies, were they? A. Yes.

4828

Jonathan Haskell—Direct

Q. Where was the plant of the Rapauna Company located? A. Thompson's Point, New Jersey.

Q. Where did it sell its product? A. All over the country and for export.

Q. Did you sell any of your products in Mexico? A. We did; yes, sir.

Q. The balance of it was mostly sold in the United States? A. Yes.

4829

Q. Do you know anything about a company that was called the Atlantic Dynamite Company? A. What Atlantic Dynamite Company?

Q. I am asking you if you know of any company? A. I know of three.

Q. Will you kindly state what company was known as the Atlantic Dynamite Company, what company first bore the name of Atlantic that you know of? A. The Atlantic Dynamite Company, which had a plant at Kenville, New Jersey. I think it was organized under the laws of California. It was owned in greater part in California.

4830

Q. What was the next Atlantic Dynamite Company? A. The next Atlantic Dynamite Company was a concern formed by the Eastern Dynamite Company to take over the works and property of the Atlantic Dynamite Company of California.

Q. And the Atlantic Dynamite Company of California had previously taken over properties of the Hercules Company and the Rapauna Company? A. No.

Q. It had not? Did it at any time have anything to do with either of those two companies? A. Not so far as I recollect.

Q. What was the third Atlantic Dynamite Company? A. It was a small corporation organized by the Eastern Dynamite Company to operate a plant in Wisconsin.

Q. Take the Eastern Dynamite Company. Do

you know anything about that company? A. I was president of the Eastern Dynamite Company when it was first organized.

Q. When was it first organized? A. 1895.

Q. What was the purpose of the organization of that company? A. They had very wide powers in their charter.

Q. I am not asking you for its charter purpose, but what was the object you had in view; was it for the purpose of taking over any of these other companies? A. The Eastern Dynamite Company was organized at the time it purchased stock of the Rapauna Chemical Company and Hercules Powder Company and the assets of the Atlantic Dynamite Company of California.

1832

Q. And was it organized for that purpose? A. Yes.

Q. What was the capital stock of that company? A. Two million dollars.

Q. How much of that was exchanged for the purchase of these other interests? A. All of it.

Q. \$600,000 of it went to the Atlantic Dynamite Company, did it not? A. It did.

4833

Q. And fourteen hundred thousand went to whom—to the Rapauna and Hercules Companies? A. The former stockholders of the Rapauna and Hercules Companies.

Q. When was this accomplished, who were in control, what particular interests were in control of the Eastern Dynamite Company? A. The largest stockholders were the Laffin & Rand Powder Company, the Hazard Powder Company and the E. I. du Pont de Nemours & Company.

Q. Then the interests which you represented and the interests which the du Ponts represented at that time were in control of the Eastern Dynamite Company, were they not? A. These three companies had control.

4834

Jonathan Haskell—Direct

Q. Yes; and the interests which you represented at that time, you and the du Pont interests? A. I simply represented the Laflin & Rand Powder Company as its president, being its president.

Q. When I speak of you I mean the company which you controlled had this interest? A. Yes.

Q. Then this first Atlantic Dynamite Company was dissolved about that time, was it not? A. It was.

4835

Q. What became of the second Atlantic Dynamite Company; is that still in existence? A. It was carried on as an operating and selling company until it was dissolved, I don't remember when.

Q. How recently? A. I cannot recollect the date of its dissolution.

Q. Was it after 1908? A. I don't remember.

Q. What became of the third Atlantic Dynamite Company? A. That was dissolved by the E. I. du Pont de Nemours Powder Company, and at the same time a number of other small corporations were dissolved.

4836

Q. When the Eastern Dynamite Company was first organized who became the original board of directors of that company? A. My recollection is they were identical with the directors of the former Hercules and Rapauna Companies.

Q. Did the California interests have any representation on the board at that time? A. No.

Q. They retired entirely. After the Eastern Dynamite Company was incorporated and acquired these other companies you have spoken of, did it acquire any other plants or companies that were manufacturing high explosives? A. It did.

Q. What were those companies? A. I don't know that I can remember all of them.

Q. Well, I will ask you if the United States Dynamite Company was one of them? A. Yes, sir.

Q. With a plant at Toms River, New Jersey? A. Yes, sir.

Q. The American-Forcite, with a plant at Hopatcong? A. Yes.

Q. And the Dittmer at Farmingdale? A. Yes.

Q. The Gogebic Company? A. I don't remember whether we bought the Gogebic.

Q. Well, were there a number of plants in Pennsylvania that you purchased at that time, too? A. There were several.

Q. Can you recall the names of those plants? In order to assist you I will ask you if the Climax Powder Company was one of them? A. My recollection is the Eastern Dynamite Company bought only a portion of the stock of the Climax Company.

4838

Q. Did it acquire a considerable interest,—was it a majority? A. My recollection is it was not a majority.

Q. Did they ever acquire a majority interest of the stock of that company? A. I don't think so. It sold that stock that it had.

Q. Oh, yes. To whom did it sell it? A. To either the E. I. du Pont de Nemours Company or the E. I. du Pont de Nemour Powder Company, I don't remember which.

4839

Q. About that time did you acquire the following companies: I will give you their names. The Brooklyn Glycerine Company—

Q. Do you understand the question? A. Whether we purchased the Brooklyn Glycerine Company?

Q. Yes. A. I believe the Eastern Dynamite Company did purchase the Brooklyn Glycerine Company.

Q. A. Kirk & Son Company? A. No.

Q. Robena Falls Company? A. No.

Q. The Rock Glycerine Company? A. I don't remember. I think they did.

Q. A. Speece Powder Company? A. No.

Q. H. Julius Smith Company? A. No.

Q. The Thompson Torpedo Company? A. I don't recollect whether it purchased that or not.

Q. Are you testifying now from the best of your recollection or have you looked the matter up recently? A. I have not looked it up at all.

4841

Q. I ask you that because my information is from your testimony in the former case that that is the way it read. I will ask you, then, if you know who did become the owners of these companies the names of which I have read, that were not purchased by the Eastern Dynamite Company? A. They all eventually became owned by the E. I. du Pont de Nemours Powder Company.

Q. Do you know when that was? A. I do not recollect.

Q. Can you give us approximately the date? A. Some time after the formation of the E. I. du Pont de Nemours Powder Company in 1903.

4842

Q. Was it a short time or a considerable time? A. A year or two, according to my recollection.

Q. You bought some companies in New York; that is to say, the Eastern Dynamite Company bought some companies in New York, did it not; for instance, the Clinton Dynamite Company? A. Yes, sir.

Q. And the Hudson River Powder Company? A. Yes.

Q. And the James Macbeth Company? A. Yes, sir.

Q. And the Electric Exploder Company? A. I don't think it bought the Electric Exploder Company. My recollection is the Electric Exploder Company was organized to take over and to do an exploder business after its stock was owned by the Laffin & Rand Company and one-half by the Eastern Dynamite Company.

Q. At the time you entered the black powder business in 1895 and became president of the Laffin & Rand Powder Company had you had any previous connection with the black powder interests in any way; was that your first entry into the black powder business? A. Yes.

Q. Did you at that time have any knowledge of an association between the manufacturers of explosives in the United States of any kind?

Mr. Katzenbach: Black blasting powder? 4844

Mr. Abbott: I am asking about explosives.

A. There was an association of black powder manufacturers existing at the time I believe.

Q. Yes. Did you become a member of that association in any way yourself? A. As President of the Laffin & Rand, it was a member of the Association.

Q. Did you at any time represent Laffin & Rand in the meetings of this association? A. Yes; I was a member of the standing committee or advisory committee—I don't remember which it was called. 4845

Q. And you attended the general meetings of the association, did you? A. Naturally.

Q. What was the condition of the black powder blasting trade in the United States between the years 1890 and 1895, when you entered the Laffin & Rand Company, if you know? A. A correct answer to that question must be a very long history.

Q. Well, I do not care to have a history of the matter; what I want to know is this: Was the association active during this period or was it inactive? (Objection, and question withdrawn.)

Q. Do you know of your own knowledge what was the general condition of affairs in the United States, with reference to the black blasting powder trade? A. From what time?

Q. From 1890 to 1895. A. I have no knowledge regarding the conditions in the black powder trade prior to 1892.

Q. 1892? Well, you say that you entered at that time into the dynamite business exclusively and continued in that until 1895? A. Yes.

4847 Q. How did you have personal knowledge of the conditions of the black blasting powder trade during the period from 1892 to 1895? A. In the sale of high explosives it very frequently occurs, particularly on construction work, that it is necessary to sell black blasting powder in connection with high explosives, and because of the necessity of selling in connection with our contract trade for high explosives black blasting powder I almost immediately became cognizant of the general conditions of the black powder business in 1892.

4848 Q. At that time did you make any investigation concerning the prices which were obtaining in the country at large for black blasting powder? A. Not excepting as I was interested in getting prices for specific pieces of trade.

Q. Did you make any inquiries at that time concerning the operations of this association? A. No.

Q. Did you know anything about the operations of the association at that time, from 1892 to 1895? A. The only recollection I have of what occurred at that time is the fact that through the many new competitors having entered into black blasting powder, the governing body, whatever it might have been called at that time, had given each company instructions or advice, to meet the competition of outside competitors.

Q. Yes. Now you know that of your own knowledge? A. Yes.

Q. Were you present at any of these meetings previous to the time when you became a member of the Lafin & Rand Company? A. No.

Q. Were there any agreements in existence in 1889 or 1890 between these various associates or members of this association, that you know of?

A. I believe there were.

Q. But do you know of them of your own knowledge? A. I recollect having seen some agreements, which I believe extended over those periods.

Q. Do you know what they were called, what the technical designation of those agreements was?

A. No; I can't recollect at this time.

Q. Was one of them known as a fundamental agreement? A. I believe it was. 4850

Q. I show you Plaintiff's Exhibit 1116 and ask you to look at that and state whether or not that is the agreement known as the "Fundamental Agreement," which you were familiar with at that time? A. It purports to be an agreement—

Q. Don't state what it purports to be, but whether you have any recollection— A. I have no recollection of the details of that agreement at all.

Q. You have no recollection of the details of the agreement known as the "Fundamental Agreement" previous to the time you were connected with the Association? A. No recollection, no. 4851

Q. What agreement was it, then, you say you knew was in existence at the time—1889 or 1890?

A. There were agreements in 1895 between the Laffin & Rand Powder Company, E. I. du Pont de Nemours Powder Company and other companies. What they were in detail I cannot say.

Q. You have stated that there was competition between the various manufacturers of black blasting powder at this time, the time you entered the dynamite business? Now, do you know what that competition resulted in so far as the low price of black blasting powder was concerned during this

competitive period? A. It resulted in very low prices all over the country.

Q. Can you state about what was the lowest price that was reached during that period? A. I recollect only one isolated case that I have heard of: 78 cents a keg.

Q. What case was that? A. I don't remember the name of the case, but the price was made, the sale was made, with King powder.

4853 Q. That was in Ohio, was it not? A. I believe it was.

Q. And that was in 1895? A. I should think so.

Q. Was there any profit in selling black blasting powder at that price? (Objection overruled.)

A. There might have been. However, it would depend on how near the mill the sale was made and what expenses attached to that particular piece of trade.

4854 Q. Did you not say in the Government case that there was no profit in manufacturing blasting powder at that price? A. On a general average, yes.

Q. Is it true or not that during this period from 1892, which you have testified to, down to 1895, there was any special observance of the regulation existing between the associations concerning competition on black blasting powder? A. I cannot speak with any personal knowledge regarding the observance by the black powder companies of their own regulations, because I was not in the black powder business at that time.

Q. But you stated you knew about the conditions in the black blasting powder trade at that time and I want to know whether it is a fact that there was a complete breaking away or a partial breaking away concerning the regulations for black blasting powder during this period? A. My recollection of

my testimony is that I only had cognizance of the prices that were made through the high explosive companies for their own business.

Q. I will ask you to state whether or not in the Government case you testified as follows: Page 1060. (Reading.) "When you entered upon these duties in February, 1895, what did you find the condition to be in the black blasting powder business in regard to prices, production and competition? A. The prices were lower at that time than they have been since, in 1892, owing to the increase of productive capacity, brought about by the building of several new and large competitive mills, the supply had far outstripped the demand, so much so that in 1892 it became necessary for the associated black powder companies to recommend to each producing concern that it defend its own trade against competition. In 1893 the panic came on and this aggravated a condition which was already bad enough, so that when I assumed the presidency of the Laflin and Rand Powder Company I found the keenest competition and, practically, all observance of anything like uniform prices discontinued by the Laflin and Rand Powder Company, the du Pont Powder Company, and the other older powder concerns. Q. Then, as a matter of fact, any contracts at that time, which were in existence in 1889 or 1890, have become dead letters, have they? "A. As regards the observance of prices on blasting powder, yes." Do you remember testifying that way? A. That was my testimony.

Q. And that was a correct statement of the facts, was it not? A. Undoubtedly.

Q. Since you have connected yourself with the black blasting powder trade your relations with the du Pont interests, as known previous to the organization of the Powder Company under the con-

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Jonathan Huskell—Direct

4858

trol of Mr. Eugene du Pont and subsequent control of those interests, was very close, was it not? A. Yes.

Q. Your personal relations with Mr. Eugene du Pont were very close? A. Very much so indeed.

Q. You resided for a time at Wilmington, did you not? A. Yes.

Q. That was from 1882 to 1895? A. From 1892 to 1895.

4859

Q. And after you left there you continued to care for the interests of the Dynamite Company in New York—was it? Did you go to New York from there? A. My office was in New York after 1895.

Q. And that is where you have continued to care for the interests of the dynamite companies or the dynamite interests which you represented? A. I have always spent more or less time in Wilmington.

4860

Q. Do you remember the names of the companies that were members of the association at the time when you became a member of that association, when the Laflin & Rand Company under your management was a member of the Association? A. I can remember some of them, yes.

Q. Can you state them from memory? A. E. I. du Pont, de Nemours & Company, Hazard Powder Company, Laflin and Rand Powder Company, American Powder Mills, Miami Powder Company, Austin Powder Company, Schaghdicoke Powder Company, Sycamore Mills. There may have been others but I don't recollect them.

Q. The Oriental Mills? A. Yes, sir.

Q. The Ohio Powder Company? A. Yes.

Q. Kink Powder Company? A. To what period does this relate?

Q. This relates to the time when you entered the association yourself, when you became president of the Laflin & Rand Powder Company? A. The King

Powder Company withdrew for a short period from the Association, I think in 1895. Whether they had withdrawn prior to February or not, I don't know.

Q. Did it come into the Association again? A. In 1896.

Q. The Chattanooga Powder Company; was that one of them? A. No.

Q. It came in later, did it not? A. Yes.

Q. When did it come in? A. In 1896.

Q. The Chattanooga Powder Company, by the way, was one of the companies that you had reference to that was engaged in competition? A. Yes. 4862

Q. In the black blasting powder trade? A. Yes.

Q. And one of the companies which were responsible for the low prices prevailing? A. Yes.

Q. The Phoenix Powder Company was another one of those? A. Yes.

Q. And the Equitable Powder Company? A. Yes.

Q. Those three companies were at that time specifically and specially engaged, were they not, in making a price war on black blasting powder? A. I don't think I could say they were engaged in making a price war. 4863

Q. Well, they were cutting the regular prices in the powder business, were they not? A. Necessarily.

Q. The Equitable Powder Company came into the Association later, did it not? A. Yes.

Q. In 1896? A. In 1896.

Q. Now, take the Aetna Powder Company. Was the Aetna Powder Company a member of the Association at any time after you became interested—
A. What association?

Q. The association you have testified to, between the manufacturers. A. No.

Q. Do you know whether or not these companies

4864

Jonathan Haskell—Direct

the names of which you have just enumerated as having been at some time members of the Association, after 1896, were at any time connected with what is known as the E. I. du Pont de Nemours Powder Company? Did they become in any way connected with it? A. Some of them did.

Q. What ones did? A. The Laffin and Rand Powder Company, the Hazard Powder Company, the Oriental Powder Company, the Chattanooga Company, the Phoenix Company; and several others. I could point them out if I had the list before me.

4865

Q. The Shaghticoke? A. Yes.

Q. The Sycamore Powder Mills? A. That was always owned by du Pont.

Q. The Ohio Powder Company? A. Yes.

Q. The King Powder Company? A. No.

Q. When was the time that these companies became associated with or merged into the E. I. du Pont de Nemours Powder Company—these companies that you have named? A. 1903.

4866

Q. That was at the time of the organization of that company, was it not? A. Yes.

Q. The Austin Powder Company and the Equitable Powder Company and the American Powder Mills and the Miami Powder Company, as I understand it, did not become merged into and become a part of the E. I. du Pont de Nemours Powder Company; is that correct? A. They did not.

Q. How long did this association that was formed in 1896, you say, after 1896, this agreement, how long was that continued, do you know, Mr. Haskell? A. I don't think I have testified regarding any agreement in 1896.

Q. I understood you to say that there was an agreement made in 1896. Is that correct? A. I said that these companies joined the so-called Association in 1896.

Q. Well, then, from the time that these companies joined the Association in 1896, was there any kind of an agreement which they entered into?

A. No written agreement.

Q. What kind of an agreement, if it was not a written agreement, was it? A. There was a verbal agreement evidenced by a memorandum of some kind.

Q. Was that a written memorandum? A. I think it was, yes.

Q. Did you ever see it? A. I must have seen it. 4868

Q. Do you know what it was called? A. I don't remember what it was called.

Q. Was it not called "The Understanding"? A. It may have been.

Q. As a matter of fact, was not that an agreement or document which you yourself prepared, Mr. Haskell, or prepared under your direction? A. I was present at the meeting when it was prepared. I don't recollect of personally drawing up the document; but I should say not.

Q. Do you remember the first meeting of the Association that you attended? A. I don't recollect. 4869

Q. Was it May 8th, 1895? A. It may have been but I should think probably it was earlier than that.

Q. You represented the Laflin & Rand Powder Company at that meeting, did you not, or at the meeting you attended? A. (No answer).

Q. Now, I will ask you to state whether or not at that time a committee was appointed for the purpose of forming a new agreement between the associates embodying such changes as might be deemed desirable? A. I don't recollect it.

Q. I show you the minutes of that meeting at page 952 of Plaintiff's Exhibit P3 and ask you to

4870

Jonathan Haskell—Direct

examine it and state whether or not it refreshes your memory as to what occurred there that day? A. (After examination) This seems to be a record of that but I have no personal recollection other than this.

(Mr. Abbott read aloud the minutes referred to, as follows) :

4871

"On motion of Mr. Coleman, seconded by Mr. Fay: That a Committee of three persons be appointed to formulate a new agreement embodying such change as it may deem to be desirable; that copies of the same be sent to all of the parties; and that the Committee shall report to a meeting of the parties here represented to be held on the 5th day of June proximo. Carried.

"The Chairman appointed to serve on this Committee Mr. Haskell, Mr. Greene and Mr. Colvin."

4872

Q. Do you recall what that revised agreement was, Mr. Haskell? A. I have no recollection at all.

Q. I show you Government Exhibit 106, calling attention to page 958, of Plaintiff's Exhibit P-3, and I ask you to look at it and state whether or not that was a document which was referred to in the minutes just read? (Objection overruled). A. I cannot say whether that is a correct copy or not, it has been so long since I have seen any authoritative copy that I am unable to say.

Q. Do you not remember any of the provisions in the agreement? A. I don't remember any of them.

Q. Could you not remember them by looking this over; would that refresh your memory as to what

they were? A. I probably would remember some of them.

Q. Please look that over, then, and state whether there are any provisions in there that you do recall?

A. (After examination): I have no personal recollection of any of these provisions.

Q. Do you remember whether any action was taken after this meeting, Mr. Haskell, with reference to the agreements which are indicated in this matter that I have just read to you? A. I have no further recollection at all.

4874

Q. You have no recollection of it at all. What was the object and purpose of the agreement which was finally entered into in 1896?

Q. Can you answer that question? A. Broadly speaking it was for the purpose of conducting a business with reasonable degree of profit.

Q. What I want to get at is what were the terms of that understanding between the members of the Association? A. In what way?

Q. Well, in order to assist you, Mr. Haskell, I refer you to Government Exhibit No. 111, page 973 of the same book, which I showed you a while ago, and I ask you to look at it and state whether or not that is the agreement which was made in 1896 between the various members of the Association? A. (After examination): I cannot say whether that is a copy or not.

4875

Q. Will you kindly examine it carefully and state whether or not you can recall any of the provisions that are set forth there? A. (After examination): I can recollect some provisions, yes.

Q. Will you kindly state what you can recall as you go along? What is the first one in the document that you recall—the names of the parties? Never mind; I see that they are not in that order there. Just take it in its order? A. I recollect the definition of blasting powder. It is defined to be

4876

Jonathan Haskell—Direct

such a powder as is made of nitrate of soda mixed with charcoal and sulphur. I recollect the general preamble clauses. I recollect the exemption of the anthracite region of Pennsylvania. I recollect the exception of Rutland County, New York. I recollect the general definitions of the various territories. I recollect the penalties for over-sales provided. I recollect the period for the settlement of adjustment of business. I recollect the provision for the election of a board of trade of five members. I recollect the provision for the three companies being considered as a unit.

The Court: Two companies, you say?

The Witness: Three companies.

The Court: That is all.

The Witness: That is all.

Q. Do you know anything about this so-called key? A. I recollect that there was a key.

Q. Do you know whether this key as set forth here is the correct key or not? A. I cannot say as to that.

Q. Do you remember what the purpose of the key was? A. I do not at this time.

Q. I will ask you whether or not the purpose was not this: The agreement being a private and confidential agreement, a single copy of it, one copy only, was made, and signed, and that was kept in the possession of the secretary, and this key was made to represent the names of the particular companies who were members, and they were to be known by the key letter and not by the name of the company. Is not that the fact? A. I suppose that must have been the fact from the list of names on the attached letter.

Q. I will read those portions of the agreement which you state you recall.

Mr. Katzenbach: We object to that. I do not see that the portions which the witness can recall can be read out of a printed book where there is no proof of the execution of the agreement.

The Court: I have a misunderstanding, I fear, of this: The witness testified that there was an oral understanding. Now it would seem that that oral understanding had been put in writing——

Mr. Abbott: He said that there was an oral understanding which was based on a written memorandum.

4880

The Court: (To the witness): Was that it?

The Witness: I think it was the reverse of that; and there was a written memorandum based on an oral understanding.

Q. Then this was the written memorandum based on an oral understanding?

Mr. Katzenbach: The witness has not said so at all.

4881

Q. I am asking him that question. A. I cannot tell whether it is or not.

Q. Well, these are the conditions that you recall as having been a part of that written memorandum or that understanding? A. I recollect certain conditions which are evidenced by certain parts of that written, printed exhibit.

The Court: You are not entitled to read them but you may place them in the hands of the witness and ask him to state, after he has looked at the different provisions, and

he says he recalls some of them, what his present recollection is.

Q. Then I hand you this document again and I ask you to state there what was the preamble clause that you recall?

The Court: (Addressing the witness): You can read it, and then state what your present recollection is.

4883 A. (After examination of the document): My recollection is that there was a preamble clause which decided a theretofore unsatisfactory condition in the business in black powder in the greater part of the United States.

Q. Is that all of the preamble clause you recall?

A. That is all I recall.

Q. Very well. What was that portion you recall there concerning the exemption of the anthracite companies? A. This agreement, this verbal agreement, did not apply to the anthracite region of Pennsylvania.

4884 Q. What are the facts, then, regarding the exemption of the anthracite regions?

The Court: (To the witness): You can refresh your recollection but you are not to read from the book it self, but give your best recollection after your memory has been refreshed.

A. The anthracite region of Pennsylvania had had powder sold in it only by the du Pont Powder Company and the Laffin and Rand Company, and because other companies in this verbal understanding had not participated in the anthracite region business that business was excluded from this agreement. (Motion to strike out as not being responsive denied.)

Q. What were the facts concerning the exception of a certain county in New York? A. I recollect that there was an exception concerning Rutland County. As to its tenor I cannot at the moment recall anything.

Q. What do you recall with reference to the definitions of the various territories? A. I recall that there were subdivisions of territories in several districts. The exact bounds, unless reading from or referring to this, I could not give.

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Q. Can you by referring to that refresh your memory so as to give those bounds? A. Practically by reading the whole thing.

The Court: (To the witness): After reading it do you know that that is a fact?

The Witness: I do not think I could say that this is a correct record of what then existed.

The Court: That illustrates the difference between evidence by documents and evidence by recollection.

4887

Q. Well, can you recall any one of the districts that is mentioned there? A. No, I don't think I can give the exact bounds of any of the districts.

Q. Can you recall the names of the districts? A. They were numbered.

Q. Only by number? A. Yes.

Q. What numbers, how many numbers are there? A. I don't recollect how many numbers there were except by referring to this book.

Q. Then will you kindly read the document with reference to the divisions of territories there and state whether or not you can give a statement as to the distinctions between the various districts. Will you kindly read that to yourself? A. I don't

4888

Jonathan Haskell—Direct

understand the question, whether the distinctions are geographical distinctions or what.

Q. As I understand it, territory must geographically distinguished. If there is any other feature in there that distinguishes them I would like to have you point that out? A. (After examination): The only district I can speak of as having a present recollection of is the Neutral Belt which embraced the state of Colorado, Utah, New Mexico, Montana. I don't recollect whether there were any more or not.

Q. Do you know what was the object and purpose of the establishment of that Neutral Belt? A. I do not.

Q. What were the provisions in the agreement which related to penalties and oversale, if you recall? A. I recall the 85 cent basis for blasting and the difference between that and the selling price being established as the penalty, or compensation.

Q. What was the reason for this penalty, what was the purpose of it? A. The purpose of the establishment of a penalty was to compensate those who failed to sell the quota allotted them, all that portion of the business which they did not do.

Q. In other words, if a company was allotted under this agreement a hundred thousand kegs and did not sell a hundred thousand kegs they received something from the party who sold more than a hundred thousand kegs? A. That is correct.

Q. This trade, then, was divided between each one of these members upon some basis of allotment, and a certain portion of the black blasting powder trade; was that it? A. That is my recollection.

Q. Can you recall how that trade was allotted; that is to say, in detail what amount was allotted to one company and what to another? A. I don't remember the allotments at all.

Q. Do you remember what was allotted to the Laflin & Rand Powder Company? A. I do not.

Q. The term over-sale, as I understand, applies to one who had sold more than the amount of his allotment? A. That is my understanding.

Q. For which he must pay a penalty to one who has sold less? A. That is correct.

Q. Do you remember whether the Laflin & Rand Powder Company at any time ever paid any penalties on account of over-sales? A. My recollection is that the Laflin & Rand Powder Company almost always was an underseller. 4892

Q. So they received pay from others on account of undersales? A. That is my recollection.

Q. You say that in order to determine the difference between the 85 cent rate and the selling price—or, rather, the difference between the 85 cent rate and the selling price constituted the penalty, or was the penalty a fixed amount? A. The penalty varied according as the selling price varied, according to my recollection.

Q. Was it at any time ever a fixed amount? A. It was practically a fixed amount at one time, at the beginning of the 1896 agreement. 4893

Q. And how much was it at that time? A. I don't recollect.

Q. You say that you recall that there were provisions in that agreement with reference to periods of settlement and adjustment. What were those provisions? A. The settlement was made quarterly, I believe.

Q. And how were those settlements arrived at? A. Reports were received by the secretary from the various companies and a computation made of the correct proportion, and the allotment of each company, and then the statement was then made showing who had sold more than its allotment and who less, and transmitted to the various companies.

Q. For example, when the Laflin and Rand Company desired to obtain an adjustment and settlement, would the secretary of that company make up a list of such black blast powder as it had sold and send that in to some person? A. Yes.

Q. Who would the person be, who would receive that list? A. It was sent to E. I. du Pont de Nemours and Company.

Q. And would the calculation and adjustment be made there? A. No.

4895 Q. Where would it be made? A. It would be made by the secretary.

Q. The secretary of what? A. The secretary of the Association.

Q. Then would it have to be sent some way through the E. I. du Pont de Nemours & Company to the secretary of the Association? A. My recollection is that the so-called five companies at that time reported to the Association as a unit.

4896 Q. Which were the so-called five companies? A. They were E. I. du Pont de Nemours & Company, the Hazard Powder Company, the Sycamore Powder Company, Laflin & Rand Powder Company, the Schaghticoke Powder Company.

Q. And they reported as a unit. Were there any other companies that reported as a unit to the secretary? A. Not that I recollect.

Q. Will you state what the provision was in that agreement with reference to the election of a board of trade, with five members, if you recall? A. I recollect that the understanding arrived at called for the election of five members of the Board of Trade. That is all.

Q. You stated in regard to the five companies that were a unit—or was it three companies? My memorandum is that you stated there were three companies that were a unit. Was there at one time three companies that were a unit? A. In the earlier

agreement I think three companies were named, but in the 1896 agreement I think there were five companies. In the five company unit there were three companies—the three du Pont companies—and two companies, the Laflin & Rand Company and the Schaghticoke Company.

Q. Do you recall anything in connection with the agreement as to the exact percentages which were allotted to the various companies? A. No, I do not.

Mr. Abbott: At this time I desire to read the minutes of the meeting of August 20, 1896, at page 967. 4898

(Mr. Abbott read aloud the minutes referred to.)

Q. Now, Mr. Haskell, does the reading of that matter refresh your memory in any way as to what occurred concerning the adoption of the understanding? A. I have no detailed recollection of what happened at all. It has been so many years ago.

Q. Do you recall anything about the personal agreements that were recommended by you, it being moved by you that it should be considered? A. I recollect some talk about a personal agreement. Whether one was actually made or not I cannot recollect. 4899

Q. What was to be the object and purpose of those personal agreements? (Objection sustained).

Q. I show you Government exhibits 107 and 108, pages 960 and 962, and ask you to state whether or not your memory is refreshed so that you can testify concerning that matter of personal agreements? A. I have no present personal recollection at all.

Q. Do you recall any of the circumstances or subject matter? A. My recollection is so hazy I cannot recall the details of a personal agreement at all.

4900

Jonathan Haskell—Direct

Q. Do you recall anything about that agreement mentioned in the matter I have just read to you called the "Revised Agreement?" A. I have no recollection of it at all.

Q. Do you recall what document, if any, there was embracing the so-called "Understanding" which was to be sent out to the various members of the Association as stated in the matter which I have just read to you? A. I recollect that there was some kind of a paper sent out to the Association. What it was I have not the slightest recollection.

4901

Q. Do you recall it as the "Abstract"? A. I don't know what the name of it was.

Q. Did you ever hear of that name? A. Only in this court room.

Q. That was the first time? A. I may have heard of it, but I have no recollection of having heard it.

Q. You know there was such a document, though? I mean you know there was a document sent out? A. I know there was a memorandum of some kind sent out to the various associates.

4902

Q. I show you Government's Exhibit 113, the same book I showed you awhile ago, and ask you to state whether that refreshes your recollection as to the document which you know was sent out? A. I cannot say whether that is the document that was sent out.

Q. Are there any of the conditions or provisions in there that were contained in this document that was sent out? A. I cannot recollect any provision of the document at all.

Q. How often did you see the document which was sent out? A. I don't think I have seen it since then. I don't know that I ever saw it then. I was not very familiar with the details that were carried on in the advisory committee and did not always read the minutes.

Q. Do you know when the copy of the document was received by the Laflin and Rand Powder Company? A. I do not.

Q. Do you know where it was kept? A. In the office of the company in New York, in the files of the office.

Q. Under whose care? A. I do not remember what officer of the Laflin & Rand Powder Company was custodian.

• Q. Would it be the secretary? A. Not necessarily.

4904

Q. Who was the secretary at that time? A. Mr. A. W. Higgins.

Q. In 1896? A. Yes, sir.

Q. How long did he remain secretary of the company? A. Until its dissolution.

Q. Do you know whether there was an arrangement of any kind made between the companies the names of which you have given here that were formerly members of the powder association that were afterwards merged into the powder company, and the companies that were not merged into the powder company after the organization of the powder company for the continuation of the agreement between those companies for a period of time? (Objection overruled.)

4905

Q. It may assist you some, Mr. Haskell, to put another question to you first. When was this association that you say began in 1896, dissolved? A. June 30, 1904, as I recollect it.

Q. After that time was any arrangement made between the companies that did not merge with the Powder Company and the Powder Company itself for a continuation of the arrangements for a limited time? A. For nine months there was an agreement made between the Powder Company and Mr. Sullivan, and on the other hand between Mr. Sul-

4906

Jonathan Haskell—Direct

livan and the Aetna, Miami and American. That is my recollection.

Q. How long did that agreement last? A. My recollection is it lasted until March 31, 1905.

Q. That takes in the American, Miami and Aetna Companies. So there were left on the outside only the Equitable Company, the Austin and the King. Is that correct? A. I don't remember the names of the companies left outside. This agreement was in no sense a continuation of the old agreement.

4907

Q. Well, what was it? A. It was an agreement for adjustment of proportions of the trade.

Q. Can you state the nature of that agreement at this time; what was the adjustment of the trade? A. Simply an adjustment of proportions of business. It had nothing to do, as I recollect it, with fixing prices.

Q. In what way did it adjust proportions of business; can you indicate that? A. I don't remember which side undersold or oversold at this time. I presume, of course, one must necessarily have done so, but which I do not remember.

4908

Q. But there was an arrangement so if there were oversales or undersales there was to be an adjustment between the parties. Is that correct? A. Yes.

Q. In the same general way that it had formerly existed? A. I don't remember the details.

Q. Do you recall making an agreement with Mr. A. O. Fay some time during 1896? A. I recollect making an agreement with Mr. Fay in 1895 or 1896. I don't remember the exact date.

Q. I show you a paper and ask you to examine it and state whether or not that is a duplicate copy of the agreement? A. I cannot state. I presume it must be because I know Mr. Fay's signature and I believe that is appended to it.

Mr. Abbott: We offer this paper in evidence.

The Witness: But it does not seem to be signed by me.

Q. Then will you look at it and state whether or not it was a paper that was authorized by you? A. I recollect that there was an agreement made. Whether it is a correct copy of the agreement that I eventually signed or not I cannot state.

Q. Will you kindly read it to yourself and state whether it is. A. I could not recollect after all these years whether it is correct. 4910

Q. Well, in the meantime, to assist you in determining that, I show you another paper and ask you to examine it and state whether or not that is your signature? A. That is my signature.

Q. And the other signature is that of whom? A. That of Mr. A. O. Fay.

Q. And that is an agreement that was entered into between you and Mr. A. O. Fay? A. In August, 1895, yes.

Q. This is the one you had in mind? A. Yes. 4911

(The document referred to received in evidence and marked Plaintiff's Exhibit 1328, and read to jury.)

Q. I will ask you whether the agreement that is referred to here in Plaintiff's Exhibit 1328 as having been made August, 1895, is not this agreement which I hand you again (indicating)? A. I can't tell whether it is or not. I know that is Mr. Fay's signature. Whether that is a draft of something that was not executed by me I cannot tell.

Q. Will you look in that and see whether or not you find the two provisions referred to in the provision contained in that memorandum? A. What provisions?

Q. Those two. A. They seem to be identical causes, two causes in both papers.

Q. Well, you did make an agreement, then, with Mr. Fay, previous to this agreement, No. 1328, which has just been read? A. Yes.

Q. And one which is referred to therein. Is that correct? A. Yes.

Q. What was the purpose of the original agreement that you made with Mr. Fay? A. To establish proportions of trade between the interests he and I represented.

Q. What were the interests he represented? A. The Aetna Powder Company.

Q. And what were the interests you represented? A. The Eastern Dynamite Company.

Q. You referred a while ago to an agreement which was made by Mr. Sullivan as representing some interests. That interest was the Powder Company was it; did you say that? A. We made an agreement with Mr. Sullivan and Mr. Fay's Company also made an agreement with Mr. Sullivan.

Q. Whom did Mr. Sullivan represent? A. He represented both parties.

Q. Oh! He was acting for both parties?

The Court (to the witness): What do you mean by "both parties"—what parties?

The Witness: He executed separate contracts between himself and the powder company on the one hand——

The Court: And you mean what by the "Powder Company?"

The Witness: The E. I. du Pont de Nemours Powder Company. He made also, I believe, a contract with Mr. Fay's company.

Q. Do you remember what the terms of that agreement were? A. I do not.

Q. Do you remember what the purposes of it were?

Mr. McCarter: I do not think that is proper.

The Court: It might be, in a general way, if he knows.

A. I have already testified, for the purpose of establishing quotas of trade.

Q. Yes. I now show you a paper writing and ask you to examine it and state whether or not it has any bearing on the agreement which you testified was made by Mr. Sullivan and Mr. Fay? A. The attached papers seem to provide for an adjustment as between the du Pont interests and Fay. 4916

Q. In accordance with the plan which was furnished as you have indicated?

Mr. Katzenbach: That is objected to as a document proven would speak for itself.

The Court: What is there besides this evidence that relates to that Sullivan-Fay document? 4917

Mr. Abbott: This is the first, if your Honor please. We are establishing through this, if your Honor please, the continuation of this conspiracy in combination with the Powder Company.

The Court: Establishing it? I think the objection is good as far as you have gone. What does he know about it?

Mr. Abbott: This witness has already stated it.

The Court: He knows in a general way, of course, that there was an agreement.

Mr. Abbott: I am only asking him whether this was the agreement.

Mr. Katzenbach: It does not purport to be at all.

Mr. Abbott: I am asking the witness for his information on that.

The Court (to the witness): Have you seen the agreement?

The Witness: I do not remember whether I have seen it or not. I do not think there was any agreement.

4919 Q. Did you not so state a while ago? A. In the sense of a written agreement.

Q. Oh! There never was any writing on the subject? A. I don't know whether there was or not. I recollect that there was an agreement for undersales and oversales.

Q. Do you recollect on what basis they agreed to pay for undersales and oversales? A. Certain quotas of trade.

Q. Can you mention what those quotas were? A. I have no recollection at all.

4920 Q. That was continued for how long? A. My recollection is, until March 31, 1905.

Q. And was it then cancelled by mutual consent? A. That is my recollection.

Q. Was it cancelled in writing? A. I don't know; I don't remember about that.

Q. Was there any provision in that agreement for making statements, rendering statements, from time to time between the parties, so that their quotas might be adjusted? A. I don't know whether there was such a provision or not, but I presume there must have been.

Q. Do you remember whether there was a provision in that agreement that the difference in the percentages should be two cents per pound for explosives, 35 cents per keg for blasting powder and

two dollars a keg for sporting powder? A. I have no recollection of the details.

Q. Do you remember whether there was a provision in that agreement for the appointment of an arbitrator to adjust these differences in case the parties could not agree? A. I could not recollect any such provision.

Q. The King Powder Company was not one of those that was merged into the du Pont Powder Company, I believe you said? A. It was not.

Q. There was a contract and agreement, was there not, in existence between the King Powder Company and the Powder Company which had been entered into at some time previous which was to run for twenty-five years? A. There was such a contract, I believe, for the sale of the King Powder Company's blasting powder. 4922

Q. Did you ever see the agreement? A. I presume I must have done so. I signed a copy.

Q. I show you a paper writing and ask you to examine it and state whether or not this is the agreement. A. (After examination) It is an agreement to which my signature is attached. 4923

Q. Do you recognize the signatures of any of the parties there? A. Yes; I recognize Mr. Fay's signature and Mr. Peters' signature.

(The paper referred to was offered and received in evidence and marked Plaintiff's Exhibit 1329, and read to the jury.)

Q. Mr. Haskell, paragraph second of this agreement says that the parties of the first part are to select some one from the companies controlled by them with whom from time to time the party of the second part is to transact its business. What companies were there that were controlled by the parties of the first part that were selected for that pur-

pose? A. What is the date of that agreement?

Q. The date of the agreement is the 31st of December, 1897. A. That referred to the Rapauno Company, the Hercules Company—the Atlantic Dynamite Company of New Jersey—and Mr. Fay's company, the Aetna Powder Company.

Q. Were those of the companies controlled by the Eastern Dynamite Company at that time? A. I don't recollect. Some were purchased before or after that.

4925

Q. They were to make returns and receive instructions from those companies as to prices. This says:

"And the party of the second part is to transact its business, make its returns and receive its instructions as to prices, terms and so forth at which powder is to be sold."

Who gave those instructions? A. I don't recollect which company was selected.

Q. It was one or the other of those companies, was it? Did the Eastern Dynamite Company itself act in any manner in that connection? A. I don't recollect whether it did or not; probably not.

4926

Q. For the time being, under the terms of this agreement, the Aetna Powder Company was to be the concern to which this cause applied. Is that correct? A. I have no recollection.

Q. Do you know when this agreement was finally discontinued or cancelled? A. I don't remember the date.

Q. Can you give approximately the date? A. I should think it was the latter part of 1906.

Q. The fact is, then, that at the time when the Powder Company took over all of these companies the names of which you gave us this morning as having been merged into that company, there were no companies on the outside except the American,

Miami, Aetna, Equitable, Austin and King, and the American, Miami and Aetna Companies had made a contract which was to be continued for nine months after the association was dissolved, and the King Company contract, which was made in 1897, was still in existence and did remain in existence until 1906, and the Equitable and the Austin Companies were owned partly by the Powder Company, were they not? A. Yes; the Powder Company owned 49 per cent. of the Equitable, and I think 33 per cent. of the Austin.

4928

Q. Were there any other companies outside of the companies the names of which have been read here which were representatives in 1896? A. Outside of what?

Q. Outside of the lists of names that have been read to you. A. I don't understand the question.

Q. Were there any other companies outside of the E. I. du Pont de Nemours & Company, the Hazard Company, Laflin & Rand Powder Company, Sycamore Powder Company, Shaghticoke, Oriental Powder Company, Ohio Powder Company, King Powder Company, Miami Powder Company, Austin Powder Company, Chattanooga Powder Company, American Powder Mills, Equitable Powder Company, that were interested in the 1896 agreements? A. The King Powder Company and the Austin and the Equitable were outside.

4929

Q. Were outside? A. And the Miami and American—

Q. In the 1896 agreement? A. No; I understood the question to relate to the time and the termination of the agreement in 1904.

Q. No; it does not relate to the termination of it. I say were they outside the pool or association which was formed in 1896; were there companies except those the names of which have been read to you

4930

Jonathan Haskell—Direct

that were outside of this association? A. Doing business? I understand this list as read embraces all powder companies that existed in 1904. They were all taken in the Powder Company with the exception of the King, Miami and American, Equitable and Austin, which were left outside.

Q. They were left outside, but they had these agreements, had they not?

Mr. McCarter: What agreements?

4931

A. The so-called Sullivan agreement extended beyond 1904 for nine months.

Q. And the so-called Sullivan agreement represented what companies? A. The Miami Company and American Company for black powder; the Aetna Company for dynamite.

Q. I show you another paper. Do you know anything about the other signature there (indicating)?

A. No, I am not sufficiently familiar with the signature of the Hancock Chemical Company.

4932

Q. That was an agreement entered into between the Eastern Dynamite Company and the Hancock Chemical Company, was it? A. Yes.

Q. Signed by you? A. Yes.

(Document referred to, offered and received in evidence, marked Plaintiff's Exhibit No. 1301 and read to the jury.)

Q. Now I show you another paper writing and ask you if you know anything about it (handing witness paper). A. (After examination) I recognize my signature to that agreement, and also Mr. A. O. Fay's signature, president of the Aetna Powder Company.

Q. Do you recognize the agreement itself? A. I recall now that such an agreement was made.

(The paper referred to was offered and received in evidence and was marked Plaintiff's Exhibit No. 1332, and was read aloud to the jury.)

Q. What part, if any of consequence, did the use of the nitro-glycerine play in the manufacture of high explosives at the time this contract was made with the Hancock Chemical Company? A. Nitro-glycerine was one of the principal ingredients of high explosives at that time.

4934

Q. And the Hancock Chemical Company largely controlled a good deal of that product, did it? A. No.

Q. Then what was the purpose of making this agreement? A. The capacity of the Eastern Dynamite Company and the Aetna were not very much in excess of the business. The Lake Superior region was remote from the manufacturers, of all three companies, excepting the Lake Superior, which was a comparatively small plant, and it was thought desirable to have the Hancock Chemical Company as an alternative reserve works to draw upon.

4935

Q. The Hancock Chemical Company was in close competition, was it not, with the Lake Superior Powder Company? A. As a rule it sold very little excepting to its own companies.

Q. These high explosives in which nitro-glycerine plays a considerable part were used in copper mining and other mining, were they not? A. Yes.

Q. And not in mining coal? A. No.

Q. Do you recognize this document, Mr. Haskell, or know anything about it? A. I do not recollect this contract at all.

Q. You know nothing about the contract. Do you know anything about the signatures attached to it? A. I know Mr. Call's signature and Mr. Lewis' signature.

4936

Jonathan Haskell—Direct

(The paper referred to was offered and received in evidence and marked Plaintiff's Exhibit 1333 and was read to the jury.)

Q. Mr. Haskell, you were an officer and director in the following companies at various times, were you not? I will read the names and as I read them, if you find any company in which you were not an officer and director, kindly check me.

4937

Mr. Katzenbach: I object to it as immaterial—

Mr. Abbott: It is to save time that I ask the question in that way. I will ask about each company, then.

Q. The Lallin and Rand Powder Company? A. Yes.

Q. You were a director in that company? A. Yes.

Q. And president? A. Yes, sir.

Q. The E. I. du Pont de Nemours Powder Company? A. Yes.

4938

Q. You were director and vice-president? A. Yes.

Q. The Delaware Investment Company? A. Yes.

Q. You were a director? A. Yes.

Q. Were you any other officer? A. I don't recollect.

Q. The Delaware Securities Company? A. I think I was a director in the Delaware Securities Company; I am not sure.

Q. Were you any other officer of that company? A. I don't recollect.

Q. The Eastern Dynamite Company. I believe you said you were a director and president of that company? A. Yes.

Q. The Lake Superior Powder Company? A. Yes; vice-president and director.

Q. The Marcellus Powder Company? A. I was a director and vice-president, I think.

Q. The Indiana Powder Company? A. I was president and director at the time of its dissolution.

Q. When was it dissolved? A. I don't recollect the exact date.

Q. About what time? A. I don't recollect at all.

Q. The Northwestern Powder Company? A. I don't recollect whether I was an officer or director of that company.

Q. Were you not president of that company also? 4940
A. I don't recollect.

Q. The Oriental Powder Mills? A. I was a director of the Oriental Powder Mills.

Q. But not an officer? A. I may have been vice-president, but I am not sure.

Q. The Mahoning Company? A. I was a director and I think vice-president of the Mahoning Company.

Q. The Phoenix Company? A. I was director of the Phoenix, and at the time of its dissolution I think I was its president.

Q. The Schaghticoke Powder Company? A. I 4941
was director, but I was not an officer that I recollect.

Q. The National Torpedo Company? A. I was director and chairman of the board.

Q. The American Storage and Delivery Company? A. I don't recollect whether I was an officer or not; I was a director.

Q. The King Mercantile Company? A. I was a director; I don't remember whether I was an officer.

Q. Were you not also vice-president? A. I may have been but I don't recollect it.

Q. The International Smokeless Chemical Company? A. I am a director and vice-president.

4942

Jonathan Haskell—Direct

Q. You are now? A. Yes, sir.

Q. How long have you been such? A. About nine years, I think.

Q. The Equitable Powder Company? A. I am a director and I think I am vice-president.

Q. How long have you been such? A. Since 1896.

Q. The Rapauno Chemical Company? A. I was president and director.

4943

Q. The Hercules Powder Company? A. President and director.

Q. The Hecla Powder Company? A. President and director.

Q. The American Forcite Company? A. Director. I don't recollect whether I was an officer or not.

Q. All these companies, the names of which I have read to you, at some time became merged in the E. I. du Pont de Nemours Powder Company, did they not, except the Equitable Powder Company and the International Smokeless Chemical

4944

Company? A. As I recollect the list, yes, sir.

The Court: You did include the Eastern Dynamite in that, did you not?

Mr. Abbott: The Eastern Dynamite is included in that question which I just put.

The Court: You did not exclude that in your question?

Mr. Abbott: No. The Eastern Dynamite Company has been absorbed, as I understand it, by the E. I. du Pont de Nemours Powder Company.

The Court: It is absorbed?

Mr. Abbott: Yes.

The Court: It is one of the defendants here?

Mr. Abbott: So is the International Smokeless, but it is a defendant. But it was absorbed, as I understand it. I think it may have maintained its corporate entity, but until recently it was owned and controlled by the Powder Company.

Q. Is not that right? A. Eventually the Powder Company owned all its stock.

Q. Is it in existence? A. I think it was dissolved by decree of the court.

4946

Q. To what decree do you refer?

Mr. Katzenbach: Objected to as immaterial.

The Court: It is in evidence, I think.

Mr. Abbott: But as the witness has stated that, I think he should be allowed to state what decree he refers to.

Mr. Katzenbach: The objection has been made before and the Court has sustained it.

The Court: Is it a decree that has been made since the beginning of the suit?

4947

The Witness: It is a decree since the beginning of the suit.

The Court: That will be sufficient without going into details.

Mr. Katzenbach: I understand, but really we are just spending time over things that are of no consequence.

Q. How about the du Pont International Smokeless Company, Mr. Haskell; were you an officer of that company? A. I don't think so.

Q. You had no official connection with it as director or otherwise? A. I think not.

Q. What was the principal reason for the organization of the E. I. du Pont de Nemours Powder

4948

Jonathan Haskell—Direct

Company? A. It was to bring together under one corporate entity a number of separate units owned by the same owner.

Q. Anything else? A. I cannot answer that question; it is too broad a question.

Q. You say it was for the purpose of bringing together certain corporate units owned by the same interests. What interests do you refer to? A. The E. I. du Pont de Nemours & Company of Delaware, which was in business itself and it owned a number of other corporations that were doing business in that line, and in certain other explosive lines; and in order that they might be brought into one corporation and eventually made an operating and selling company doing all the business, the E. I. du Pont de Nemours Powder Company was organized.

4949

Q. Are the companies you have enumerated here today some of the companies which this E. I. du Pont de Nemours Powder Company was authorized to take over in the manner in which you have indicated? A. That is my recollection.

4950

Q. Were there any other companies outside the list of names which have been read here today that it was organized to take over? A. There may have been, but I don't recollect them.

Q. You say it was organized for that purpose. Did it proceed to do that? A. Just as quickly as it could.

Q. Immediately after its organization? A. Within a year or two.

Q. Do you know anything about an agreement that was known as the European or Foreign Agreement? A. I knew such an agreement existed, yes.

Q. Did you ever see it? A. Yes.

Q. Why was the Association between the gunpowder manufacturers or explosive manufacturers,

discontinued on the 30th of June, 1904? A. It had outlived its usefulness. No meetings had been held, as I recollect it, after the spring of 1903, and it was terminated because one or two of the outside companies gave notice; and if they had not done so we probably should have done so.

Q. What companies were those one or two that gave that notice? A. My recollection is the Equitable and Austin.

Q. The Equitable and Austin were still owned, though, 49 per cent and 33 1/3 per cent respectively by the Powder Company, were they not? A. Yes.

4952

Q. What was the last meeting of the Association which you attended? A. It was in the spring of 1903; I don't recollect the exact date.

Q. Did you ever see at any of the meetings Mr. T. C. du Pont? A. Yes.

Q. When did you first see him there? A. In the spring of 1902.

Q. And when did you last see him there? A. I don't recollect.

Q. Can you state about when? A. I don't recollect whether he was present at the meeting just before I went abroad in 1903 or not.

4953

Q. Did you ever see Mr. Pierre S. du Pont at any of those meetings? A. Yes.

Q. When did you first see him there? A. I don't recollect. Not as early as I saw Mr. T. C. du Pont.

Q. Do you know when you last saw him there? A. No. He was never a member of the advisory committee.

Q. He was not a member of the advisory committee but he attended the meetings of the Association representing the du Pont interests, did he not? A. I don't think so. He may have done so, though.

Q. Now I show you Government Exhibit 119, known as P-3, in this Court, and ask you to look at

4954

Jonathan Haskell—Direct

it and state whether or not that has any relation to this document which you state you knew as the foreign agreement. (Objection overruled.) A. It purports to be a copy of the so-called "Foreign Agreement." I do not know whether it is correct or not.

4955

Q. Will you kindly read it off and see whether or not it is according to your recollection a copy of the foreign agreement as you remember it? A. (After examination.) I recollect certain parts as having appeared in the agreement.

Q. When you have finished reading it then I will ask you in detail about it, Mr. Haskell. A. Do you want me to read the whole thing?

Q. Yes; I would like to have you read the whole thing, if you will. In order to save time, if you will read it and then state what you recognize as you go along, that will save re-reading it the second time.

Mr. Katzenbach: We object to that.

4956

The Court: If the purpose is to put in this as evidence he must be able to speak of it as an entirety.

Mr. Abbott: All right.

Q. Will you answer that question? A. What was the question?

(The question was repeated by the stenographer.)

A. I recollect certain phases of the "Foreign Agreement" that seem to coincide with what is herein set forth.

Q. Do you recognize the agreement as a whole as being similar to the agreement which you saw? A. I cannot speak as to it being a complete copy.

Q. I do not mean a complete copy word for word, but I mean in substance. (Objection overruled.)

A. I recollect some of the paragraphs.

Q. Do you recognize now whether it is substantially the language of the "Foreign Agreement" which you say you saw? (Objection overruled.)

A. With regard to certain clauses.

Q. What are the clauses in there which you think it is substantially alike?

Mr. Katzenbach: That is objected to. If the plaintiff is to introduce a copy of the agreement he has got to introduce it by somebody who can testify to it being a copy. 4958

The Court: This is not a case of that kind—

Mr. Abbott: It may be that he recognizes all or most of the agreement.

The Court: He may read it and if it is composed of clauses or a subject matter which he recognizes he may designate briefly what he recollects.

Mr. Katzenbach: If those could be designated by number and not by reading— 4959

The Court: I don't care how he designates them as long as he does not attempt to give what the document itself says.

Mr. Katzenbach: You could give the number or paragraph.

The Court: Is it paragraphed?

The Witness: Yes, sir.

Q. Tell us the number of the paragraph, then.

A. I don't understand whether I am to give the substance or—

The Court: The number of the paragraph.

4960

Jonathan Haskell—Direct

Q. Give the number of the paragraph. A. I recollect the substance of paragraph 2, paragraph 4, paragraph 5, part of paragraph 6.

Q. Will you indicate what part you refer to, down to what lines? A. The part appearing on page 1126. I recollect the substance of the last ten line of paragraph 7. I recollect paragraph 9. I recollect paragraph 11. I recollect paragraph 18. That is all.

4961

Q. Do you know anything about the parties named on page 1123? A. I recollect that—do you want me to give them by number or name?

Q. Give the names.

Mr. Katzenbach: Give the number.

Q. Well, if you will give the number I will take the number. A. I recollect No. 1, 2, 3, 4, 5, 6, 8, 9, 11 and 12. The others I don't recollect of having been parties to this agreement.

4962

Q. While you have that book in hand I will ask you if you have any recollection whatever relating to the substance of paragraph 7 other than the part which you say you do recall? A. I have no recollection at all.

Q. Have you any recollection whatever of any kind of the provisions of paragraph 8?

Mr. Katzenbach: Eight was omitted.

Mr. Abbott: I know it was.

A. I have no recollection of those terms.

Q. Have you any recollection whatever of the provisions in paragraph 10, or any of them? A. No.

Q. Or of paragraph 12? A. No.

Q. Or of 13?

Mr. Graham: Those are omitted paragraphs.

Mr. Abbott: I am asking if he has any recollection of any of the provisions in those paragraphs. (Objection overruled.) A. No.

Q. Any of the provisions of paragraph 14? A. No.

Q. Or any of the provisions of paragraph 15? A. No recollection.

Q. Or any of the provisions of paragraph 16? A. 4964
I have no recollection.

Q. Or any of the provisions of paragraph 19? A. No.

Q. Or any of the provisions of paragraph 20? A. No.

Q. Do you know anything about how that "Foreign Agreement" came to be made? (Objection overruled.) A. The agreement was made between Mr. du Pont and several gentlemen who went went abroad for the purpose of making it.

Q. And how did it come that these various companies the name of which you have indicated came to be interested in that "Foreign Agreement?" (Objection overruled.) A. When the agreement was made several companies that were presumed to be interested in the various phases of the high explosives and black powder situation were asked to become parties to it and did become parties to it. 4965

Q. He asked them to become parties to it? A. I don't recollect, now.

Q. Do you know anything about a plant that was being built by some other foreign powder manufacturers at Jamesburg, New Jersey, about the time this foreign agreement was entered into? A. I believe the plant was started for the manufacture of caps.

4966

Jonathan Haskell—Direct

Q. Was or was not that one of the moving reasons for making the foreign agreement? A. That had something to do with it, yes.

Q. I call attention to the minutes of the annual meeting, the general meeting of the manufacturers of gunpowder, held at 44 Cedar Street, New York City, October 28, 1897.

(Mr. Abbott read from the minutes referred to as follows:)

4967

"Mr. Fay made a statement to the meeting concerning a visit made to Europe by himself and Mr. H. M. Barksdale (Mr. Eugene du Pont and Mr. B. Peyton having joined them later) their object being to negotiate with certain manufacturers of explosives, who had purchased land in the United States, and begun the erection of a plant, with the intent of making here detonators, dynamite and black powder. This visit lasted for several months, the negotiations being of a very important character, and at last concluded in a satisfactory manner.

4968

"On motion of Mr. Haskell, seconded by Mr. Peters, That, after mature deliberation, and consideration of the representations made by Mr. Fay and others regarding the London agreement, we approve as far as we may, of the action taken: the representatives here present of the several companies obligate themselves to use their best endeavors to secure the signature of their companies to the Agreement, assuming their share of the obligations imposed.

"On this motion the roll was called and all of the parties present, or represented, answered in the affirmative, and the motion was declared carried.

"On motion of Mr. Peters, seconded by Mr. Coleman, That in the opinion of the meeting, Mr. Fay and Mr. Barksdale are justly entitled to compensation for valuable services rendered in connection with their mission to Europe, and that the Black Powder interest in the United States (not including the Pacific Coast Manufacturers) hereby obligate themselves to pay \$2,000, and recommend that the other interests appropriate \$8,000, thus securing a fund of \$10,000, to be divided 4970
equally between these gentlemen.

"On this motion the roll was called, and all of the parties present, or represented, voted in favor thereof, and the motion was declared carried."

Q. Do you recall anything in connection with that? A. I recollect that action being taken, yes.

Q. Was the E. I. du Pont de Nemours & Company of Delaware a party to that agreement? (Objection overruled.) A. I believe they were.

Q. Were the Lafin & Rand Company in this suit 4971
a party to the agreement? A. I would say they were.

Q. Was the Eastern Dynamite Company of Wilmington, Delaware? A. Yes.

Q. The Miami Powder Company of Xenia, Ohio? A. Yes.

Q. The American Powder Mills of Boston, Massachusetts? A. Yes.

Q. The Aetna Powder Company of Chicago? A. Yes.

Q. The Austin Powder Company of Cleveland? A. I don't recollect that it was.

Q. The California Powder Works of San Francisco, California? A. Yes, sir.

Q. The Judson Dynamite and Powder Company

4972

Jonathan Haskell—Direct

of San Francisco? A. I don't recollect whether it was or not.

Q. The Vereinigte-Koln-Rottweiler Pulverfabriken of Cologne. A. Yes.

Q. The Nobel Dynamite Trust Company Limited of London? A. Yes.

4973

Q. Now, will you state, after refreshing your recollection from an examination of paragraph 2 of the document in your hand what portion of that agreement you remember as contained in that paragraph? (Objection overruled.)

Q. Do you understand now what you may do in answer to the question which I have propounded? A. I think so. I recollect a provision in the agreement to the effect that lists of controlled companies should be exchanged by both parties.

Q. Anything else in that paragraph? A. No.

4974

Q. I would like to have you again examine paragraph 3 of the document and state whether or not after reading it it refreshes your memory so you can state what your recollection is in regard to that matter. A. I recall that at that time there was a provision for the purchase by the American factories of some detonators. Nothing else in the paragraph do I recall.

Q. Do you recall any condition at that time with reference to the abandonment of the plant which had been started at Jamesburg, New Jersey? (Objection overruled.) A. I recall the plant was abandoned, and while there may have been provisions in that in regard to it I don't recall it.

Q. You recall the reading of the minutes on the subject yesterday, do you not, in which it was stated that the plant was not to be completed? A. I recall hearing it, yes.

Q. Do you recall whether there was any understanding between these different parties that that abandonment was to be the result of the agreement?

A. I suppose there must have been such an understanding, but just where it appeared I have no idea.

Q. Now, if you will turn to paragraph 4 of the document in your hand, after reading that state whether it refreshes your recollection as to the contents of the original document so far as relates to the subject matter there. A. I recall the provisions of the 1897 agreement whereby each party agreed not to build plants in the other's territory for the manufacture of black blasting powder.

Q. Take the next paragraph, paragraph No. 5. Do you recall the subject matter of that paragraph? 4976

A. I recall a similar provision regarding smokeless powder, as indicated by section 5.

Q. Now take paragraph 6. Will you examine that and state whether or not it refreshes your recollection of the contents of the original document so far as it relates to the subject matter? A. I am under the impression that the agreement carried a provision that no military smokeless plant should be erected in the other's territory by the other party.

Q. Do you remember whether there was any provision in there with reference to inquiries which might be submitted by any Government to any of the parties with reference to purchases or prices on powder or other explosives? (Objection, sustained.) 4977

Q. I will ask you, Mr. Haskell, whether you have any recollection that there was a provision in that agreement to the effect that any inquiry which was made by any Government or either of the parties to the agreement, that that inquiry was to be referred to the other party before any action was taken upon it, with all of the information contained in the inquiry? Do you recall any such provision as that?

Mr. Katzenbach: I desire to make the same objection.

The Court: I confess I do not exactly understand the question. In the first place, may he not be asked whether he recalls anything in the agreement relating to Governments. That is a general question—just as to governments?

Q. I will ask you that. Do you recall anything in that respect? A. Yes; I recollect something.

Q. What is your recollection on that? A. My recollection is that the agreement contained a reciprocal provision whereby if the American factories received an inquiry for European smokeless powder, military powder, it was necessary for them to ask the European factories for the price to be charged, and vice versa.

The Court: That is an illustration of what I have suggested. By merely suggesting the word Government to him he recalls matter pertaining to it.

Mr. Abbott: In this particular case I think it has been very clearly brought out.

The Court: That method should be first exhausted.

Q. Oh, very well, your Honor. Now, then, were there any other provisions in the agreement that related to any of the governments?

The Court: Any particular government?

Q. (Continuing): Yes; any particular government? A. I recall no other.

Q. Now, come to the question of territory. Can you recall what territory was mentioned in that agreement? A. The only clear recollection I have of the territorial minutes was that the American

factories had in the agreement the geographical territory of the United States, Mexico, Central America, and the islands in the Carribean Sea, and that South America was joint territory for both.

Q. And what was said, if anything, about the other portions of the globe? A. Europe and certain other territory, just what I don't recall, was allotted to the European factories.

Q. Do you remember whether anything was said regarding Canada or the British possessions? A. There was a provision, but what it was, I don't recollect.

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Q. Was there anything said about the islands in the West Indies? A. I have already spoken of those islands.

Q. Was anything said about the Spanish possessions? A. Not that I recollect.

Q. Was anything said about Colombia and Honduras? A. There was a reference to it but what it was I have no recollection.

Q. Do you know what the territory which you have mentioned as being territory in which you were jointly interested was called, what it was denoted in the agreement? A. I don't recollect at the moment.

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Q. Do you remember whether there was anything in the agreement concerning "Syndicated Territory?" (Objection overruled.) A. South America may have been called "Syndicated Territory," I do not recollect.

Q. In the territory that you referred to in South America, what were the privileges, if any, that obtained as between the two parties in that territory? A. Both sides sold to the trade in South America.

Q. And as to the other territory which you mentioned, the territory which was awarded to the American companies, what right, if any, did the

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Jonathan Haskell—Direct

European factories have in that territory? A. I think they agreed not to sell in this country.

Q. What rights, if any, did the American factories have in the territory which was awarded to the European factories? A. I presume it was a reciprocal clause that worked both ways. I would like to qualify that, my answer to the other question. I am not at all clear whether that was universal, whether it applied to all classes of goods or not.

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Q. Was there any penalty provided in the agreement in case either of the parties should enter the other's territory for any purpose? A. I don't recollect whether there was or not.

Q. Was there any provision in the agreement with reference to the erection of mills or plants in each other's territory? A. I have already testified to that.

Q. I didn't so understand you. I understood your answer applied to selling goods in each other's territory. A. Paragraphs 4, 5 and 6 covered that.

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Q. But I do not think I asked you as to this—

The Court: You are still referring to paragraphs.

The Witness: I testified specifically regarding the building of plants of the several kinds in the different territory.

Q. O, very well. I did not so recall the testimony. Will you mind stating again what the facts were, as I do not recall in regard to that particular matter? A. The American factories agreed not to build plants in Europe, and vice versa.

Q. Oh yes. Was there any provision in this agreement with reference to how the affairs of the various parties were to be managed? A. There were reference, but I have no recollection as to the de-

tails.

Q. Do you know whether or not there was any officer that was appointed by the agreement or provided for under the agreement who was to represent either of the parties? A. Yes, I think there was an American chairman and a European chairman.

Q. Do you recall how far the duties of either of those chairmen applied, how far they went, and what they had to do with reference to the affairs of the parties under the agreement? A. I recall nothing regarding the details of it at all. 4988

Q. Do you know who was the American chairman? A. I think the first American chairman was Mr. Eugene du Pont.

Q. And do you know who succeeded him? A. Mr. T. C. du Pont, I think.

Q. Do you know whether Mr. T. C. du Pont was the chairman at the time when the agreement was cancelled? A. I believe he was, yes.

Q. Do you know who was the foreign chairman? A. I have no recollection at all.

Q. Was there any provision in that agreement with reference to the basis upon which prices were to be fixed for the products of the various parties? 4989

A. I have no recollection at all.

Q. Do you know whether there was any penalty or any provision in the agreement as against either of the other parties in case they violated any of the provisions with reference to prices? A. There may have been; I don't recall the details.

Q. Do you know anything about whether there was a fund which had been established under the terms of that agreement, any kind of a fund? A. I recollect a fund being created by a certain amount being paid into each chairman upon shipments being made to South America, which eventually reached the sum of 12,000 or 14,000 dollars.

Q. Do you remember whether there was any

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other fund in connection with it? A. Not that I recall.

Q. Do you know what that fund was called that you have in mind now? (Objection overruled.) A. I have no recollection.

Q. Did you, as president or as an officer or director of the Laffin and Rand Powder Company ever make any payment to the chairman under that European agreement? A. Yes, sir.

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Q. Do you recall how much they amounted to? A. I have not the remotest idea—I will ask that that question be read again. I don't understand it exactly. (Question repeated by the Reporter.) Yes, my answer is correct. It did.

Q. But you do not remember the amounts? A. No.

Q. Do you remember how often you made any payments of that character? A. No, I do not.

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Q. Do you remember what those payments were for? A. They were under an agreement at that time, a part of this agreement; but I don't recall the provisions at all, because that part of the agreement is not here.

Q. You were an officer, as you state, of the Equitable Powder Company, and I believe you said you had been for some years, since it came into the Association. Now, it is in evidence here that the Equitable Powder Company paid something like—well, a very large sum of money—into the hands of the Chairman of this Association. Do you know anything about that? A. Nothing other than that they must have paid, because I recollect that they agreed to.

Q. And that same agreement applied to all the American companies that had signed this agreement or had become parties to it? (Objection sustained.)

Q. Do you know how long that agreement was to continue? A. For ten years.

Q. Do you know when it was executed? A. In 1897.

Q. Did it continue until 1907? A. No; it was cancelled in 1906.

Q. Do you know the reason why it was cancelled? (Objection sustained.)

Q. I will ask you, Mr. Haskell, whether at the time the agreement was cancelled there was any consideration paid for the cancellation of the agreement? 4994

Mr. Katzenbach: That is objected to.

The Court: Does not Mr. T. C. du Pont speak of that, is that not covered by the record? If so I do not know that it is necessary to repeat it. (Objection overruled.)

A. I know a very considerable sum of money was paid. Whether it was in the consideration for the cancellation of the agreement or not I don't know what it would be called.

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Q. Do you now recall what that sum of money was? A. I do not.

Q. As an officer of the Eastern Dynamite Company did you ever make any payments into the hands of the chairman of the association? A. No. I was president of the Eastern Dynamite Company and the president does not make disbursements.

Q. That may be true, but do you know of any payments that were made by your company? A. Payments must have been made, because they bore a part of the agreement.

Q. Yesterday, Mr. Haskell, I started in to call your attention to the relation of the King Powder Company to the Association and how that relation terminated, and I showed you a contract which was

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read to the jury, and then I also showed you another contract which was Plaintiff's Exhibit 1330. That was objected to and then it was withdrawn. Now you stated in reference to that contract that it appeared therefrom that the agreement from the King Powder Company had been cancelled in 1901, and that you were under the impression it was 1906. Now I ask you whether or not there was another concern with which the Association had something to do known as the King Mercantile Company? A. There was, yes.

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Q. Was there an agreement made with the King Mercantile Company of which you had any knowledge? A. I don't recollect any.

Q. What was the King Mercantile Company? A. It was a selling company organized to sell for the King Powder Company some blasting powder and some smokeless.

Q. When was it organized? A. I don't recollect the date.

Q. Do you know about what date it was? A. No, I cannot place it at all.

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Q. Were you an officer of that company? A. I don't recollect whether I was or not.

Q. I show you Government's Exhibit 333 on page 2393 of volume 4 of the petitioner's exhibits in the Government case and ask you to look at it and state whether or not you have any knowledge concerning that document or any other document to which it has similarity? A. I am under the impression that an agreement was made between the du Pont and Laffin and Rand Companies on the one hand and the King Powder Company on the other whereby their product was to be sold.

Q. You mean whereby the King or the Powder Company was to be sold? 9. Yes.

Q. Do you recall whether this agreement that

you have in mind as the one which you have just testified was entered into, was the agreement which was cancelled in 1906? A. That is my recollection.

Q. Do you remember what was paid for the cancellation of that agreement, if anything? A. A large sum of money; I cannot recollect the exact amount.

Q. Was it as much as a hundred thousand dollars? A. It was about that; I don't remember the exact amount.

Q. And that was paid to the King Powder Company, was it not? A. Yes.

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Q. By whom was it paid? A. I don't recollect.

Q. I mean by what companies? A. I don't recollect whether that payment was made entirely by the du Pont Company or whether some other companies participated in it.

Q. The Laflin and Rand Company was a party to the agreement? A. The time of its cancellation was after Laflin and Rand had gone out of active business and if any payment was made it would have been made by the du Pont Powder Company.

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Q. Do you know what the reason was for the cancellation of that agreement? (Objection overruled.) A. We were advised by counsel as to some question as to its legality.

Q. I show you a document and ask you to examine it and state whether or not you know anything about the paper? A. The paper bears my signature as president of the Eastern Dynamite Company.

Q. Do you know the other signatures? A. I know the signature of Mr. Birmingham, president of the California Powder Works, and of Edward G. Lukins, president of the Judson Company, and of Mr. Fay, president of the Aetna Company.

5002

Jonathan Haskell—Direct

(The document referred to was offered and received in evidence as Plaintiff's Exhibit 1334 and read to the jury.)

Q. Mr. Haskell, do you know whether that agreement was ever terminated? A. It was terminated, yes.

Q. When was it terminated? A. I don't recollect the date.

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Q. Can you recollect about the date? A. I haven't the remotest recollection.

Mr. Katzenbach: What was the date of the agreement, Mr. Abbott?

Mr. Abbott: That particular one was the first day of October, 1898.

(Mr. Abbott read further from the exhibit, memorandum of agreement supplementary to the agreement of October 1st, 1898, relating to Mexican business.)

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Q. On the 13th day of October, 1899, then, this agreement was still in force, was it, Mr. Haskell—the original agreement was still in force? A. I have no recollection of the date they cancelled it.

Q. When were you first elected a member of the advisory committee? A. Immediately upon my election as president of the Laflin and Rand Powder Company, in February, 1905, I became a member of the governing committee. Whether it was called the Board of Trade or the Advisory Committee at that time, I do not know.

Q. Were you in pretty regular attendance upon the meetings of the association after you became a member of it? A. Yes.

Q. And upon the meeting of the Advisory Committee after you became a member of that committee? A. Yes.

Q. As a matter of fact, you attended those meetings about as regularly as any one in the association, did you not? A. That is my recollection.

Q. Do you know anything about a document or a series of rules known as the compendium of rules?

A. I have a recollection of something of the kind; but nothing regarding the details.

Q. Did you ever make use of it in performing your duties as a member of the Association in any way? A. Well, the only use that could be made of it as a member of the association would be in connection with the consideration of a number of its provisions or something of that kind.

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Q. What was the object and purpose of the advisory committee, what were its powers? A. The advisory committee was created before I came into the powder business. I found it there.

Q. I know; but I am asking you now what was its purpose, what were its powers? A. I suppose it was intended to recommend prices to the various members of the association.

Q. Do you know whether it did do that? A. Yes.

Q. Do you know whether it did that at every meeting which it held? A. I don't think it did.

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Q. What else did it do, what were its other powers besides that? A. Discussed matters of interest to the trade in general.

Q. And take final action? A. It was not always possible to take final action.

Q. Well, I am asking you whether it did not take final action in any particular case. A. I presume it did; I don't recollect any particular case.

Q. Did it have anything to do with making or authorizing contracts? A. Yes.

Q. Did it have anything to do with making or authorizing special prices? A. It was in its power to do so. Just when it did it and when it did not I don't recollect.

5008

Jonathan Haskell—Direct

Q. Did it have anything to do with directing or authorizing any action with reference to competition? A. Not excepting the formulation of prices designed to meet competition, to meet competitors.

Q. Was there another committee which operated as a part of the association known as a special committee? A. There was.

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Q. What were the powers and duty of the special committee? A. The special committee was created for the purpose of advising the making of special prices to meet the competition of competitors between the meetings of the advisory committee, which were held semi-occasionally.

Q. How often were the general meetings held? A. I don't recollect.

Q. How often were the advisory committee meetings held? A. My recollection is they were held monthly.

Q. And the special committee meetings might be held at any time? A. Yes, sir.

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Q. Do you know about how often they were held? A. The work of the special committee was largely carried on by correspondence.

Q. Was the special committee a large body or a small one? A. My recollection is it consisted of two members.

Q. About how many members did the advisory committee usually consist of? A. When I first became a member of it, there were five members, and later it was increased to seven.

Q. Did you at any time know Mr. Eugene du Pont as a member of the advisory committee? A. Yes.

Q. Did you at any time know Mr. T. C. du Pont as a member of the advisory committee? A. Yes

Q. Or Mr. Pierre S. du Pont? A. No.

Q. Did you at any time know Mr. Moxham as a

member of the committee? A. I don't remember whether he was a member of the advisory committee or not. He may have been.

Q. Do you remember at any time of seeing Mr. Moxham or Pierre S. du Pont present at any of the meetings of the advisory committee? A. Yes.

Q. When was it you saw them present at the meetings? A. Between the spring of 1902 and 1903.

Q. You mean during that period you saw them often? A. I don't remember how often. 5012

Q. But you did see them a number of times at the meetings of the committee during that period? A. Yes, sir.

Q. Do you remember a meeting held some time in December, 1902, at which Mr. Moxham was present, when he made some remarks to the committee? A. I don't remember what meeting it was that the remarks I suppose you refer to were made.

Q. You do know some meeting at which he was present and made an address? A. He made an address almost every time he was present. 5013

Q. He was an active visitor, then; but he was not a member of the committee, you say? A. I don't recall when he became a member of the committee, but I think he was a member after Mr. Colvin's retirement.

Q. Oh, yes. He was active in its affairs. Did the advisory committee keep minutes of its doings, its actions? A. Yes.

Q. Did the special committee keep minutes of its actions? A. Yes.

Q. Did you ever seen any of those minutes? A. Yes.

Q. Mr. Haskell, shortly after the organization of the E. I. du Pont de Nemours Powder Company was there a board established known as the sales

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Jonathan Haskell—Direct

board? A. My recollection is that the sales board was organized before the organization of the E. I. du Pont de Nemours Powder Company.

Q. How long before? A. I don't remember the exact date, but in the spring of 1903.

Q. What company was it at that time that the sales board was made a part of its organization?

5015 A. The sales board was a body organized by me personally for the purpose of caring for the various questions which arose in regard to the sales departments of the various companies then owned by E. I. du Pont & Company of Delaware.

Q. Was that organization carried on after the Powder Company came into existence? A. It is still in existence.

Q. Well, it was carried on immediately after the Powder Company came into existence, was it? A. Yes, sir.

Q. And under your direction as before? A. Until I relinquished the care of the sales department.

Q. And when was that? A. In June, 1907.

5016 Q. What did you do in organizing that board; did you issue some orders in writing? A. I presume I did. I don't recollect at the moment.

Q. Will you state briefly how it was organized, who were the members of it? A. The sales department as then organized by me consisted of a director of sales—I would like to correct that, because the director of sales was not called such until after the organization of the Powder Company and I became vice-president. The organization consisted of various assistant directors of sales for the various districts of this country—the Eastern District, the Western District, the Central District, and so forth—and a sales auditor. They, together with my first assistant, Mr. Patterson, constituted the sales board.

Q. How often did the sales board meet? A. I don't recollect exactly, but I am under the impression that it met three times a week.

Q. And it was subject to call, was it not, and met sometimes oftener than that? A. There were regular days for its meeting, but if occasion arose it was called together oftener.

Q. Did you yourself retain any official or superior authority over the action of that board? A. I always presided over the board when there and in case of decisions regarding prices, if I was not there, the advice was sent to me in New York, and unless countermanded was promulgated the next day.

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Q. You had the power of reversal or veto of any action of that board, had you not? A. Yes.

Q. And you kept very close watch over its affairs? A. Yes.

Q. And directed its movements. During the time that this agreement between the American and—well, what I will call for convenience the Fay companies—and the Powder Company, was in existence in 1904, which was continued for nine months, was there any communication in any way between the sales board and those companies with reference to prices? A. No.

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Q. None whatever? A. Not that I can recollect.

Q. What was the general nature and purpose of the agreement that I have just referred to?

Mr. Katzenbach: That is objected to—the general nature and purpose. The agreement, it seems to me, would speak for itself.

Mr. Abbott: I am speaking of the agreement that was made between the Fay companies—the American, Miami and Aetna companies—and the Powder Company,

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Jonathan Haskell—Direct

which carried the organization down to 1905.

The Court: It is in evidence?

Mr. Abbott: No, those agreements are not in evidence. That has only been stated by the witness.

Mr. Katzenbach: I thought you produced them here. Did you not?

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Mr. Abbott: If you Honor please, so that your Honor may get this straight, as I understand it, this witness has testified that after the association was dissolved in 1904 there was an agreement made between the Powder Company and the American, Miami and Aetna companies, to continue their co-operation for a period of a year.

The Court: Nine months, I think.

Mr. Katzenbach: Nine months.

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Mr. Abbott (continuing): Which was limited afterwards to nine months. It was cancelled in nine months. Now that is the agreement which the only evidence we have of is the testimony of the witness. There is no written agreement to that effect that I have any knowledge of. Is that correct?

The Witness: I don't think your statement is quite correct as to my testimony?

Q. Then I would like to have you state it as it should be. A. I do not wish to convey the impression that the so-called Sullivan agreement, which was the means of a trade adjustment between the Fay interests—the American, Miami and Aetna—and the Powder Company, was in any sense a perpetuation of the old trade agreement for the fixing of prices and so forth, because it contemplated nothing and effected nothing. It was simply an adjustment. Prices were no part of it.

Q. Then were the terms of agreement or the adjustment of the agreement made then? Just state them, please. A. I don't remember the exact terms; I don't remember the proportions of trade or the penalties that we paid for oversales; but there was an adjustment arrangement as between the companies.

Q. I showed you yesterday a document or memorandum which appeared to be something in relation to the Sullivan Agreement, which you did not recognize as being that agreement. Do you recall the paper? A. I recall being shown several detached sheets.

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Q. I will show you the same document again, the same being numbered 201 as an exhibit given in the deposition of Mr. Addison G. Fay, and please state whether or not now, on looking at that document you can refresh your memory as to the terms of the agreement which was in existence between the Powder Company and the Fay companies from 1903 for a period of nine months. A. It does not recall to my memory anything further than I have already stated.

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Q. Then I will have you state definitely, in view of the fact that you have interpreted the agreement, what are the terms of that agreement? A. I have already stated the thing as clearly as I can.

Q. No; you stated your interpretation of it. I would like you now to state just what the agreement was.

The Court (To the Witness): Pertaining simply to allotments?

A. That is all.

Q. What was it that was allotted by that agreement? A. Trade in explosives.

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Jonathan Haskell—Direct

Q. How was the allotment made up? A. On certain proportions; I don't recollect the proportions.

Q. Were the proportions the same as those that had prevailed while those companies were members of the Association? A. I don't recollect at all.

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Q. Do you know whether they were similar to them? I mean by that, not exactly in the same ratio, but the general proportion maintained? A. I don't recollect anything in regard to the proportion of the trade.

Q. But there was an allotment of trade? A. Certainly.

Q. Can you state what portion of the trade, if any, as to territory, was allotted to those companies? A. I have no recollection regarding the territorial limitation.

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Q. Was there any penalty fixed for violation of the terms of the agreement by either party? A. The only penalty was the payment for oversales in case there were oversales. Each party paid its proportion.

Q. Was it the same general penalty provision that applied to the members of the association? A. I don't recollect the terms.

Q. Well, would you say it was not? A. I don't know at all.

Q. You don't know. Now, as a matter of fact, do you at this time recall any of the terms of the agreement definitely? A. I have no recollection of the details of the agreement at all.

Q. Then will you state why you interpret the agreement to be different from the arrangement which preceded it while the same companies were members of the association? In what way was it different? A. It was different in this way: That all the arrangements which preceded it contem-

plated, affected a certain government as to prices.

A. After June 30, 1904, there was no exchange of information, as near as I can recollect, or any attempt to govern the prices that the Fay companies should make or that we should make.

Q. But there was an attempt, was there, to distribute and allot and apportion the business in explosives between these companies and the companies which you represented. Is that correct?

A. It was only an allotment in so far as it required a payment from one to the other in case either exceeded a certain proportion of the trade which was agreed upon.

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Q. But why should that proportion be required with that penalty unless there was some specific trade that was set off to one party or another; how could you determine it? A. It was simply based upon certain proportions of business to be done by one or the other in toto.

Q. Will you state what was the reason, if any, why you made any difference between that arrangement that you then entered into with the Fay Companies as to prices and the arrangement which had formerly prevailed between the members of the Association? (Objection overruled.) A. My recollection is that at that time it was deemed entirely unnecessary and perhaps unwise to have control exercised by either of the other sales as regards prices.

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Q. Why was it unwise? A. At that time I had no general instructions forbidding consultation with other competitors as regards prices. I didn't care to do anything different in this case.

Q. Why did you forbid consultation regarding those matters at that time? (Objection overruled.)

A. Because the Association has been dissolved and I thought it was very much better that the company

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Jonathan Haskell—Direct

should make its own prices and let others make their prices.

Q. Better for what reason? A. More to the interest of the company.

Q. Well, was there any other reason? A. Not that I recollect.

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Q. Now, as a matter of fact, was not the reason you did not want to make that arrangement regarding prices because you had been advised that your association was unlawful under the Sherman Act? A. I don't think so.

Q. Have you not so stated? A. I stated with regard to some agreement, regarding the cancellation of some agreement at a later date. At that time I don't think we had been so advised.

Q. What agreement was this that you were advised at a later date was contrary to the terms of the Sherman Act? A. I don't know, I have been shown so many.

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Q. You stated that in reference to some agreement you had been so advised and I would like to know what agreement you had in your mind.

Mr. Katzenbach: He stated it this morning, that it was in reference to the King Company——

The Court: Let the witness testify.

Mr. Katzenbach: But I was just stating that, to which he testified——

The Court: You have the objections and I have ruled.

A. I recall now, from what Mr. Katzenbach said, that it was in reference to the King Company.

The Court: Of course. That is the reason the Court stopped counsel. We want the

witnesses' testimony. You have a right to examine him, Mr. Katzenbach, upon cross examination.

Mr. Katzenbach: I do not profess to know a thousandth part of the powder business that this witness knows, but I did remember he had testified that.

The Court: Yes, he knows more about it than you do.

Mr. Katzenbach: Certainly he does. And I do not profess to have any special knowledge of it, except that I remembered about his testimony in that respect.

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The Court: Proceed.

Q. I will ask you to state whether it is not a fact that the reason you made this arrangement in the form you have testified you did make it, with the Aetna Powder Company and the Miami Powder Company and the American Powder Company, was for the purpose of avoiding what you had been advised was an unlawful act? A. My recollection is not distinct as to the time when we sought and obtained advice, but I should answer, as far as I can see, in the negative; I believe that this action took place before the general discussion of the Sherman Act and our relation to it.

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Q. Have you ever testified to the effect that you did take that step on account of the action being regarded as unlawful under the Sherman Act? A. I may have done so, but I do not recollect it.

Q. Do you know anything about the origin of what was known as the contract system? A. I cannot speak of its origin at any particular time—or did it have an origin? As I understand it, it has always existed.

Q. Then do you know anything about its origin so far as the trade association was concerned? A.

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Jonathan Haskell—Direct

Contracts were being made, as I recollect it, when I became president of the Laffin and Rand Powder Company in 1895.

Q. Do you know anything about when the first contract was authorized to be made by the Association? A. No.

Q. Do you know anything about when the matter was first brought up in the Association? A. No.

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Q. Did you have anything to do with it? A. I imagine it was brought up while I was in knickerbockers.

Q. I am asking you now whether you know anything about what was done in the Association. Was the Association established when you were in knickerbockers? A. Long before. In 1871, as I recollect it.

Q. And you know that fact? A. I know from having read about it—

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Q. There was an Association in 1871 that you had heard of from some other people? A. I am under the impression that there is testimony in the Government case to that effect. That is the first thing I knew of it.

Mr. Abbott: We have been trying to get it in here but have not been able to do so. Thank you, Mr. Haskell.

Mr. Katzenbach: You have it in now.

Q. I will proceed to the reading of these minutes. "Government's Exhibit No. 117-N.

"At a general meeting of manufacturers of gunpowder, held at the Park Avenue Hotel, New York City, on the 2nd day of December, 1896:"—

And then follows a list of those present, among whom was Mr. J. A. Haskell. It is not necessary to read all those names.

(Reading further:)

"On motion duly made and seconded, Colonel H. A. du Pont was made Chairman of this meeting.

"The Minutes of the last General Meeting, held October 15th, 1896, were read, and approved after amendment substituting Tallapoosa Powder Mills for 'Southern Powder Company Interest.'

"Referring to the Minutes of the last General Meeting and to a motion made and Carried thereat, That a Committee be appointed to confer with a representative of a certain jobbing house in Hardware having contract for Sporting Powder with the Equitable Powder Manufacturing Company, with a view to determine a method for securing conformity to prices and terms on the goods purchased by said Jobbing House from the Equitable Company, and to the appointment by the Chair of Messrs. Haskell, Colvin and Olin as said Committee; Mr. Haskell of the Committee made verbal report on the matter."

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What jobbing house was that, Mr. Haskell? A. I think it was the Simmons Hardware Company of St. Louis.

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Q. I will continue with these minutes:

(Reading, page 1041:) "Referring also, to the Minutes of said Meeting of October 15th, 1896, and to a motion then made and Carried appointing a Committee to confer with certain other manufacturers, competitors in the business, for the purpose of making, if possible, some arrangement to restrain their recent action in their reduction of prices, the Chair having then appointed Messrs. Haskell, Brown and Lent as such Committee: Mr. Haskell of that Committee reported verbally, stating what had been done in this matter and that an informal agreement having been concluded with said parties, or two of them, a definite form of agreement would be prepared and a copy of the same

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Jonathan Haskell—Direct

should be sent to each of the parties here represented."

Q. Who were those other competitors in business at that time? A. At that time—I don't recall.

Q. (Reading further from minutes, page 1041:)

"On motion of Mr. Peters seconded by Mr. Colvin, That the proposed Agreement in this matter as stated by Mr. Haskell, is ratified, approved and confirmed as to its relation to A. Kirk & Son."

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Q. Do you recall anything now in connection with that matter? A. I have no recollection outside of the reading of the paper.

Q. I read further from the minutes:

"On calling the roll, all of the parties present or represented (excepting the Chattanooga Powder Company which declined to vote), voted in favor of the same, and the Chairman announced the motion Carried.

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"After discussion, on motion of Mr. Coleman seconded by Mr. Eugene du Pont, That a Committee of five be appointed by the Chair to present to this Meeting a scheme of prices of Blasting Powder, advancing said prices in certain Districts, Carried. The Chair named as such Committee, Messrs. R. T. Coleman, Eugene du Pont, Fay, Peters and Haskell."

Q. Do you remember anything about that matter? A. No.

Q. I read further:

"The Committee, after some time spent in considering this matter, made report through Mr. Coleman its Chairman, as follows:—Second District, \$1.25 except Maryland; Maryland \$1.35. Third District, Michigan and Wisconsin South of 44th parallel of latitude, Kentucky except Ohio River towns and Counties and Pulaski, Wayne, Laurel, Whitley, Harlan, Bell and Knox in Kentucky; West Virginia South of Main Line of Bal-

timore & Ohio Railroad and including the Counties of Russell, Buchanan, Dickinson, Allegheny, Wise, Tazewell, Scott and Lee in the State of Virginia, \$1.30; all other territory within the Third District \$1.35. Fourth District, \$1.40 except the State of Florida which State shall be \$1.65. Fifth District, \$1.50.

“On motion of Mr. Peters seconded by Mr. Haskell, That the report of Mr. Coleman on this matter and that the Resolution of Mr. Fay which had been offered and Carried, reading as follows:— Resolved, That these prices shall be put in effect by a telegram from the Secretary to the Home Office of each party here represented, by night message this day, with instructions that this list of prices is to be in effect by telegram to every Agent, from and including Thursday, December 3rd, and that information of change in prices shall not be communicated by any person here present, directly or indirectly; and the prices shall prevail until the Advisory Committee shall, under its powers, modify the same—be approved and made obligatory on all the parties. On this motion the roll was called, and all of the parties presented or represented, voted in favor thereof.

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“After discussion, on motion of Mr. Fay seconded by Mr. Haskell, That the Memorandum of Understanding, now existing, be amended so that the statements of sales to be made to the Secretary for each period of three months, shall be rendered to him within thirty days from the expiration of all of said periods, and payments by the parties who have oversold shall be made within thirty days thereafter. On this motion the roll was called, and all of the parties present or represented voted in favor thereof.

“Considering the matter of having some understanding with E. B. McAbee, on motion of Mr.

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Jonathan Haskell—Direct

Coleman seconded by Mr. Eugene du Pont, That the Ohio Powder Company is hereby requested to negotiate with E. B. McAbee with the view of making him Agent for the sale of Blasting Powder, whereby he (McAbee) will sell only Powder manufactured by the Ohio Powder Company, the same was Carried.

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"On motion of Mr. Haskell seconded by Mr. Eugene du Pont, That permission is hereby given to take order for delivery after January 1st, 1897, but no contracts shall hereafter be made for a period exceeding one year, the same was Carried.

"Discussing the question of contracts for future delivery of Blasting Powder and of discounts to large buyers, on motion of Mr. Peters duly seconded, this matter was referred to the Advisory Committee with power.

"On motion of Mr. Peters seconded by Mr. Coleman, That this Meeting do now adjourn *sine die*, Carried.

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"Adjourned.

"(Signed) Edward Greene,
"Secretary."

Q. I will read the minutes of the meeting of June 10, 1897. Among those present was Mr. J. A. Haskell of the Laflin and Rand Company. I need not read all those present. You represented the Laflin and Rand Powder Company, the Schaghticoke Powder Company and the Lake Superior Powder Company. I will omit some of the immaterial matters.

(Reading from minutes:)

"Mr. Haskell, for the Committee informally appointed by the Advisory Committee May 27th, 1897, presented a report in the form of a Resolution.

"On motion of Mr. G. M. Peters, seconded by Mr.

Haskell, That the report be received and considered paragraph by paragraph, Carried.

"The report was considered, revised and amended, and Mr. G. M. Peters moved, seconded by Mr. Eugene du Pont, That it be adopted as finally read.

"The ayes and noes were called and all of the parties present or represented voted in favor of the Resolution which was declared Carried unanimously, as follows:

"Resolved, That the following course of procedure is adopted, and the Advisory Committee authorized to carry out its provisions:

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"After presenting full data to the Advisory Committee, any principal may be authorized by said Committee to make confidential contracts in specific cases, it being understood that, until such authorization be given, no customer or employee shall be in any manner communicated with by any principal or by his representative, concerning a contract at less than list prices, and that a copy of every contract entered into shall be immediately filed with the Secretary of the Advisory Committee.

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"No contract shall be made for less than two or more than five years.

"Within the above limits of time, the prices on contracts authorized shall not be less than those indicated in the following clause:

"All Powder shall be billed at the price fixed at time of shipment for the territory in which delivery is made; deduction, however, to be made by customer in remitting, from prices prevailing at the date of this Act as follows:

"15 cents per keg in case of buyer who shall have purchased 10,000 kegs per year, or more;

"10 cents per keg in case of 5,000 or more per year;

"5 cents per keg in case of 2,400 kegs per year, or more.

"And provided further, any principal may guarantee contract customer against decline in price of Powder by himself under similar conditions.

5057 "Futhermore, it is to be specified in contract that in case of advance of price of Nitrate of Soda above 1.80, contract price is to be advanced 1 cent per keg for each 5 cents per 100 pounds advance in Nitrate of Soda, during the time that Nitrate of Soda remains above 1.80.

"The Authorization to sell below full schedule prices to be made to one principal only, unless upon full consideration it appears that more than one concern has sold any considerable portion of the business, or for other good and valid reasons.

5058 "No contract shall be made unless the mines or work upon which the Powder is to be used is specified and enumerated in the contract, the intention being that Powder contracted for is intended for the buyer's own consumption and not for sale excepting to his miners or employees. Provision can, however, be made for furnishing such additional mines as purchaser may acquire during life of the contract.

"It is understood that all contracts shall provide that the party supplying the Powder shall have the right to furnish any good, merchantable Powder in lieu of his own brand.

"No contracts shall be made at less than full carload prices or obligation entered into to furnish Powder at less than schedule, by any employee; that is to say, such contract can only be signed by proper authority at the general office of seller.

"In extraordinary and exceptional cases, the Advisory Committee shall have power to authorize contracts on terms or at prices different from the foregoing.

"Mr. G. M. Peters moved the following:

"Resolved, That in any given application for contract at reduced rates, each principal shall be requested to furnish the Advisory Committee a statement of Powder sold the party with whom it is proposed to make contract, for a period of two years previous to May 1st, 1897, and to furnish such other data as any principal may desire to submit bearing on the question.

"The motion was seconded by Mr. Coleman; the ayes and noes were called; all of the parties present or represented voted in favor thereof, and the motion was declared Carried unanimously.

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"On motion of Mr. Haskell seconded by Mr. G. M. Peters, That at the adjourned meeting of the Advisory Committee, each principal shall come prepared with a list of those carload customers, in which he is interested, showing sales by months for two years ending May 1st, 1897, to which he can refer if necessary, Carried unanimously."

Now, Mr. Haskell, do you remember that action taken by the Association while you were a member of it? A. I remember an action taken to resume the making of contracts, yes.

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Q. You say that they "resumed" making contracts. Will you state when there was any action had before that in which the Association made contracts?

Mr. Katzenbach: I object to that question.
—"In which the association made contracts."

The Court: Authorized contracts.

Mr. Abbott: Well, the witness said "resumed." I will take his statement for it.

The Court: Authorized the making of contracts.

Mr. Abbott: Yes, put that in the question, "authorized" the making of contracts.

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Jonathan Haskell—Direct

A. I cannot state regarding the minutes of the association. My only knowledge is derived from the first experience I had coming into the high explosive business and being confronted with the necessity of making contracts for the period of the work, the first notable case was in connection with the Chicago Drainage Canal, where it was necessary to sell on a long term—the work was supposed to last four or five years—powder at a definite price, and I immediately took up with the black powder manufacturers the matter of getting black powder to supply that trade.

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Mr. McCarter: What year was that?

The Witness: That was in 1892.

Q. Do you know of any action that was had by the Association as early as 1892 with regard to making contracts? A. I know nothing regarding the details of the action of the association prior to the time I became a member of it in 1895.

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Q. So when you used the word "resumed," you had in mind, did you, that at this time the association began making contracts, not that it resumed making contracts but that it began making contracts, contracts theretofore having been made by others, who were dealing in explosives. Is not that what you have in mind? A. On the contrary, I made contracts as president of the Laflin and Rand Powder Company. I cannot recall any details at the moment, but it has always been the method of doing business—to make contracts.

Q. That is an answer to my question, but it does not answer this point: Were the contracts which were made by the Laflin and Rand Powder while you were president of that company before this date authorized to be made by the association? A.

They were not; because, as I have before testified, in 1892—this I learn by hearsay, and of course—

Q. What I want to find out now is definitely, so far as you know, whether there was an earlier date at which the association began authorizing specific contracts to be made. A. I started to explain that at the time I assumed the presidency of the Laflin and Rand Company each associate had authority to make any prices it chose. So it was not necessary to get any authority.

Q. What I want to get at is this: With that authority, given you by the association— A. It had been given the Laflin & Rand Company before I assumed the presidency.

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Q. Will you just answer whether that authority was given by the association? A. It was.

Q. Very well. Do you remember whether there was a time shortly after you became a member of the Association when the making of contracts was entirely suspended by the members of the Association, both individually and as members of the Association? A. Yes.

Q. Now will you state when that time was? A. At the time that the prices and terms were established, immediately after the making of the 1896 agreement.

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Q. Yes. Now, what was the reason that you suspended the making of the contracts at that time? A. There was a very serious difference of opinion as to whether those contracts should be made. I always opposed its discontinuance; although there were practical difficulties in the way of making any at that time. All contracts made for powder in the United States were made payable in currency, and at that time the silver agitation was at its height. Mr. Bryan was before us as a possible candidate and we did not like the idea of making long-term contracts payable in United States legal tender

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Jonathan Haskell—Direct

when we might have to buy nitrate of soda, paying for it in gold on its importation from Chile. Consequently, notwithstanding our customers objected very seriously to being confined to short term agreements, we discontinued the making of contracts, mainly on that account.

Q. Yes. Now, then, you did discontinue at that time. That was in what year? A. 1896

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Q. Between 1896, at this time when you suspended this method of making contracts, and June 10th, 1897, was there anything done by your association in making contracts of this character, authorizing them? A. I don't recollect whether there was or not.

Q. Is it not a fact, then, that it was on June 10th, 1897, when you entered upon a general plan authorizing the various members of your Association to make contracts in accordance with the terms of this resolution which has just been read to you? A. I have no recollection of the exact date. It was some time in 1897.

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Q. Well, do you recall the resolution? A. I recall the resumption of making contracts.

Q. Do you recall the resolution as read to you? A. I don't recall all of it, no.

Q. Do you recall any part of it? A. I recall in general terms the plan that was adopted.

Q. Is it not a fact that the terms and conditions set forth in that resolution are practically the same as the terms and conditions set forth in all of the contracts which have been made since that date by the members of the Association? A. I don't think so.

Q. In what way would it be different, can you state? A. I don't know how the associates are making contracts now.

Q. Well, I am speaking, if you will understand me, I want to carry it down to as late as 1908—

A. Of course I have no knowledge of the terms of contracts of competitors.

Q. I hold in my hand a large bunch of contracts which have been produced under subpoena duces tecum from the files of the E. I. du Pont de Nemours Powder Company. Do you know anything about the contracts that are in the possession of and have been authorized by the E. I. du Pont de Nemours Powder Company? A. I know nothing except that contracts have been authorized.

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Q. Have you ever examined any of those contracts at all to know what their contents were? A. I may have done so, although I don't recollect having done so.

Q. Do you know as a matter of fact, without going into any unnecessary details on that point, that the general terms and conditions set forth in this resolution have been carried out with some variations in one contract and some variation in another, but that these terms and conditions have been practically carried out down to the time at least when you left the active control of the sales board in 1907? A. I cannot recall the terms of the contract at all.

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Q. Very well. As a member of the advisory committee, you from time to time authorized contracts to be made, did you not? A. Yes.

Q. And you authorized those contracts to be made upon information which was supplied to you by various members of the association, did you not? A. As a member of the special committee, yes.

Q. Yes. And as a member of the special committee. Now, did the various members of the association, from time to time, make such contracts as you had authorized them to make? A. I don't know whether they did or not.

Q. Do you not know as a matter of fact that they

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Jonathan Haskell—Direct

made such contracts and returned copies of those contracts to the association? A. I know that there was a provision made that they should return contracts, but I never saw any of the contracts so returned.

Q. You did not follow them up to see whether or not they were returned? A. No.

Q. Was the E. I. du Pont de Nemours & Company one of the companies that the E. I. du Pont de Nemours Company was organized to take over?

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A. Yes.

Q. And the Sycamore Powder Mills? A. Yes.

Q. And the Hazard Powder Company? A. Yes.

Q. And the Laflin & Rand Powder Company? A. Yes.

Q. And the Schaghticoke Powder Company? A. Yes.

Q. And the Oriental Powder Mills? A. Yes.

Q. And the American Powder Mills? A. No.

Q. And the Austin Powder Company? A. No.

Q. And the Miami Powder Company? A. No.

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Q. And the King Powder Company? A. No.

Q. And the Ohio Powder Company? A. Yes.

Q. And the Marcellus Powder Company? A. Yes.

Q. And the Lake Superior Powder Company? A. Yes.

Q. And the Chattanooga Powder Company? A. Yes.

Q. And the Equitable Powder Company? A. No.

Q. The Southern Powder Company? A. The Southern Powder Company had been dissolved some years before.

Q. How dissolved and by whom? A. My recollection is that the works of the Southern Powder Company were purchased and the companies dissolved almost immediately thereafter.

Q. Purchased by whom? A. By the companies associated at the time in the black powder business.

Q. I would like to know what you mean when you say the "associated companies at the time." I want to get this straight this time, Mr. Haskell.

A. Certain companies met together periodically, appointed a standing committee, an Advisory Committee, I should say, and co-operated for their mutual benefit in the black powder business.

Q. Is that the association that was organized in 1896? A. Certain companies were associated together under the 1896 agreement. Some of them had been in under an agreement before that.

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Q. I am asking you now whether the companies that took over this Southern Powder Company were associated together under the 1896 agreement? A. They did not take it over as a body. Each of these concerns, according to my recollection, purchased some of the stock of the Southern Powder Company, and my recollection is that it was almost immediately dissolved.

Q. Yes, and went out of business? A. It had gone out of business before.

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Q. Very well. All of the property and assets of that company had been absorbed by one or the other of these companies that was in this association, then. Is that right? A. Yes, they and all the plant. There was not any business.

Q. Very well. Then there was no Southern Powder Company in existence at the time of the organization of the E. I. du Pont de Nemours Powder Company? A. That is my recollection.

Q. Now, the Phoenix Powder Manufacturing Company? A. Yes.

Q. The California Powder Works? A. No.

Q. Did you not take that over subsequently? A. That is my recollection.

Q. Well, it was organized, was it not, for the pur-

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Jonathan Haskell—Direct

pose of taking over that company along with others?

The Court: That company?

Mr. Abbott: Yes; the California Powder Works.

Mr. Katzenbach: That is to say, the E. I. du Pont de Nemours Powder Company was organized for the purpose of taking over the California Powder Works; is that the object of the question?

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Mr. Abbott: I said that among others.

The Court: What is the answer?

A. That is not my recollection.

Q. Did it acquire it very shortly afterwards?

A. It owned and had owned for a great many years a large minority interest, and it did acquire certain other shares which gave it a majority interest.

Q. Very shortly afterwards? A. Yes.

Q. California Investment Company. That was a company organized primarily, was it not, to acquire the California Powder Works? A. It was not.

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Q. It had not anything to do with it at all? A. Nothing.

Q. Were you an officer of that company? A. I do not think so.

Q. How do you know, then, what it had to do in that matter? A. I know that it did not have to do the thing you asked me.

Q. How do you know, if you were not an officer? A. Because I know what it was organized for.

Q. How do you know it? I am asking you that. A. Well, it was organized for the E. I. du Pont de Nemours Powder Company, of which I was an officer at the time.

Q. You knew, then, all about its business and

affairs by reason of the fact that you were an officer of the Powder Company? A. Yes.

Q. And it was organized, was it not, before the E. I. du Pont de Nemours Powder Company was organized? A. I don't think so, but I don't recollect the exact date.

Q. At the time when these various companies, the names of which I have just read to you, and you indicated were taken over by the E. I. du Pont de Nemours Powder Company, all of their properties, and all of any subsidiary companies that they had or were operating with were acquired and taken over at the same time, were they not? A. If the company took over the controlling stock it must have taken over everything they owned.

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Q. Then your answer is yes? A. If I understand the question, as I have answered it.

Q. You were giving a conclusion. I come back now to this other question in regard to these contracts, and I will ask you to state whether all the contracts which had been before entered into, that is, entered into before any of these companies were taken over and absorbed into the Powder Company, were also taken over by the Powder Company in case such contracts were then in existence and the companies that I may refer to are the following: E. I. du Pont de Nemours & Company, Sycamore Powder Mills, Hazard Powder Company, Laffin & Rand Powder Company, Schaghticoke Powder Company, Oriental Powder Company, Ohio Powder Company, Marcellus Powder Company, Lake Superior Powder Company, Chattanooga Powder Company, Southern Powder Company, Phoenix Powder Company. Now, can you answer that question? A. If the question is whether we caused the companies that were acquired at the time of the formation of the Powder Company to repudiate any contract they had, I would answer in the negative.

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Jonathan Haskell—Direct

Q. Of course, I have not asked you whether they repudiated any contract, Mr. Haskell. I am simply asking you whether they took over such contracts as they found these companies had made and were still in existence at the time they took them over?

A. I cannot understand the question, unless it is a question whether we allowed these companies to continue to carry out contracts they then had, and if your question was whether we caused them to abrogate any, my answer is no, we did not

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Q. I have not asked you any question covering the abrogation of these contracts. What I want to know is whether you acquired such contracts as these companies had at the time you acquired the companies. That is as plain as if I asked you whether they had any other piece of property which you acquired. A. I don't understand it at all, because we acquired the companies and naturally whatever contracts they had we continued to carry out.

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Q. Then your answer is that you did acquire the contracts they had, if they had any?

Mr. McCarter: I think the question is confusing in that it assumes that because they got the stocks of the company they got the personal property and everything. Of course the contract went in.

The Court: I think the witness has said that.

Mr. Abbott: Very well.

Q. Do you know anything about the time when the Chattanooga Powder Company came into the association? A. They became a party to the 1896 agreement, yes.

Q. Then they came in in 1896, did they? A. Yes, sir.

Q. Do you know anything about when the Phoenix Powder Company came into the association?

A. It came in at that time.

Q. The Equitable? A. Yes.

Q. At that time? A. Yes.

Q. Previous to the time when they came into the association had they been disturbing the prices of the association for black blasting powder in the districts where they operated? A. Their injection into the powder business at the time they commenced operations caused the demoralization which existed for the next few years. 5090

Q. I want to read Government's Exhibit 117-B at page 1009. (Reading): "At a meeting of manufacturers of gunpowder, held at the Park Avenue Hotel, New York, on the 21st day of May, 1896"—— I omit the names of those present except Mr. J. A. Haskell. Among those present was Mr. G. M. Peters, who was he? A. President of the King Powder Company.

Mr. Abbott (reading):

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"On motion duly made and seconded, Colonel du Pont was made chairman of this meeting.

"After some discussion, Mr. Fay suggested that a committee be appointed to confer apart with Mr. G. M. Peters respecting the allotment to be made him under the proposed new arrangement of quotas of blasting powder, and the committee was made to be as follows: Mr. Haskell, Mr. Coleman and Mr. Colvin.

"A recess of the meeting was taken to allow this committee to consider and report.

"Later, the committee reported, by Mr. Haskell, that Mr. Peters, on behalf of the King Powder Company agreed, subject to further consideration, between Mr. O. E. Peters and himself, to accept 85,-

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Jonathan Haskell—Direct

000 kegs of blasting powder as its quota, instead of 100,000 kegs as allotted in 1886.

"On motion of Mr. Coleman, seconded by Mr. Riker, that the report of the committee be adopted, the roll was called and all of the parties present or represented, voted in favor thereof.

"On motion of Mr. Haskell, seconded by Mr. Colvin, that the meeting take up the matter of penalty for oversales of blasting powder. Carried.

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"Mr. Fay moved that so long as the price of 'B' blasting powder in the second district shall not exceed \$1.10 per keg the penalty for oversales shall be 25 cents per keg, and whenever the price shall advance beyond \$1.10 the penalty shall be increased by as many cents per keg as the price shall have been advanced.

"Mr. Fay withdrew his motion, and Mr. Brown, seconded by Mr. Riker, moved that the penalty for oversales of blasting powder shall be the difference between 85 cents per keg and the carload price in the second district.

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"On this motion of Mr. Peters, seconded by Mr. Haskell, that hereafter settlements for overloads of blasting powder shall be made quarterly on the sworn statements of actual sales for the quarter.

"On this motion the roll was called and all of the parties present or represented, voted in the affirmative.

"On motion of Mr. Haskell, seconded by Mr. Riker, that the Phenix Powder Manufacturing Company be given a quota of 65,000 kegs of blasting powder, and furthermore, that as a matter of equity the Phoenix interest is entitled to the same quota compared with their sales as shall be allotted to the Equitable and Chattanooga Companies; whatever excess over or above the 65,000 kegs there may be ascertained as due them shall

be apportioned to the subscribers to the Phoenix purchase in proportion to their interests."

Q. Now was there at that time a purchase of the property of the Phenix interest by the various companies in the association, Mr. Haskell? A. Certain companies purchased the stock of the Phoenix Company.

Q. And when it was taken in it was given an allotment in accordance with what is stated here; do you recollect that? A. I recollect it was given an allotment; just what I don't recollect.

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Q. I will read the rest of these minutes:

"On this motion the roll was called and all of the parties present or represented voted in the affirmative.

"On motion of Mr. Coleman, seconded by Mr. Weightman, that the allotment to the Southern Powder Company for sales of blasting powder shall be 30,000 kegs, and on this motion the roll was called and all of the parties present or represented voted in the affirmative."

Q. Was this the same Southern Powder Company that you say was afterwards dissolved? A. It had been dissolved then or soon after.

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Q. Soon after this time? A. Yes.

Q. I read further:

"On motion of Mr. Haskell, seconded by Mr. Turck, that the chair appoint a committee to treat with Mr. Connable (who was near at hand in another room) respecting an allotment of blasting powder for the Chattanooga Powder Company. The chair appointed as such committee Messrs. Coleman, Peters and Brown, and the committee retired."

Q. Now what was the idea at that time of treating with Mr. Connable? A. Mr. Connable, together with his associates, owned 49 per cent, or there-

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Jonathan Haskell—Direct

abouts, of the Chattanooga Powder Company. Having a large individual interest, he naturally had to be treated with to establish the percentage of business that he was entitled to do under the new agreement.

Q. That was done, was. You finally made the arrangement with him? A. Yes.

Q. And he was given an allotment? A. Yes.

5099 Q. I believe you said you were an officer and president at one time of the Indiana Powder Company? A. Yes.

Q. When did you become president of the Indiana Powder Company? A. I don't remember the date.

Q. Can you state about when it was? Let me ask you this first, perhaps it will assist you: Were you president at the time when it was organized? A. No.

5100 Q. How long after it was organized did you become president? A. My recollection is I became president after it was purchased by the du Pont, Laflin and Rand and other companies.

Q. That was in what year? A. I don't remember the year.

Q. Did the Indiana Powder Company at any time have anything to do with regard to disrupting or affecting the arrangements between the association with regard to the sale of black blasting powder? A. It took more or less of the business of the association, of certain of the associates.

Q. In other words it was a competitor for the trade? A. Yes.

Q. I will now read from Exhibit No. 122-b, found at page 1156 of this volume:

"Meeting of March 22nd, 1898.

"Upon application the committee recommended the price to be \$1.50 per keg delivered, for blasting

powder, to contractors on the Washington County Railroad, in Maine.

"The committee authorized a rebate, not to exceed 10c. per keg, upon powder sold to granite companies, upon Cape Ann, when they shall transport the powder so sold by their own boats, from Boston, or from any other New England port.

"The matter of the competition of the Indiana Powder Company was considered and the subject referred to the next General Meeting.

"Also the question was deferred to that meeting concerning the competition in the Pittsburgh District, Pennsylvania, by the Cressona Powder Mills.

"The secretary was asked to call the attention to each of the parties to the exact terms of the rule relating to discount to City Trade, asking all of them to conform thereto.

"The matter of prices for Powder for Export Trade was considered and postponed till the next General Meeting."

The rest of the matter I will pass for the present. I read now on page 1175. This is a general meeting of the Association held on the 8th of October, 1898. Among others present was Mr. J. A. Haskell. After some reference to the election of officers and various members of the committee, these minutes read as follows:

"At the General meeting held April 21st, 1898, the Advisory Committee was asked to fix the price on powder to be exported to the Republic of Mexico.

"Colonel du Pont at this time, reported for the Advisory Committee, as its Chairman, that prices for powder delivered in the Republic of Mexico had been fixed, and that the Secretary had advised all of the parties of such prices.

"At the meeting of the Advisory Committee, held September 22nd, 1898, the question was presented

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of their reduction of the discount to City Trade, from 10% to 5% at St. Louis, Memphis and New Orleans, and after some discussion, the matter was referred to the next General meeting.

"There was therefore this day some further discussion of the matter, and

"On motion of Mr. Peters, seconded by Mr. Coleman, That this subject be referred back to the Advisory Committee, carried unanimously.

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"A statement was made to the meeting setting forth the conditions of the contract with Messrs. du Pont & Company and the Laffin & Rand Powder Company had made with the Belmont Powder Works, and its proprietor, which resulted in a pecuniary burden resting upon the two concerns first named, and which it was suggested should not be borne by them entirely, inasmuch as said contract had been made for the general good.

"After considerable discussion and a statement of the amount, approximately, of this pecuniary burden;

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"On motion of Mr. Haskell, seconded by Mr. Fay, That one-half of the burden of expense incurred in this contract be borne by the parties here represented.

"On this motion the roll was called, and all of the parties present or represented, voted in favor thereof, excepting The King Powder Company; Mr. O. E. Peters declaring that he would not vote or commit his Company to the payment of any sum of money."

Q. What about that Belmont Powder Works matter; do you remember that? A. I remember the Belmont Powder Works was the property of John B. Griswold, and the contract was made by the Laffin and Rand Powder Company and du Pont Companies to buy its output, to resell it.

Q. And that contract imposed a burden upon

the du Pont Company and Laffin and Rand Company which was afterwards shared by the associates. Is that correct? A. That is my recollection. I don't know whether it was afterwards shared. It appears from that record it was not.

Q. I didn't catch that. A. It appears from the record you read that the King Powder Company declined to participate.

Q. The King declined to vote on that. Mr. Peters was present at this meeting representing the King Powder Company.

5108

Mr. Katzenbach: It went a little further. He declined to vote.

Mr. Abbott: Did it go further than that?

Mr. Katzenbach: Yes.

By Mr. Abbott:

Q. I will read that again.

(Mr. Abbott repeated the last part read and continued the reading of the minutes referred to as follows):

5109

"Upon presentation of the matter of the purchase of the Globe Powder Company, by Messrs. du Pont & Company and the Laffin and Rand Powder Company at a cost of \$30,000.

"On motion of Mr. Coleman, seconded by Mr. Brown, That Messrs. du Pont & Company and the Laffin & Rand Powder Company be reimbursed in the sum paid by them, by the parties here represented, for the purchase of the Globe Powder Company.

"On this motion the roll was called, and all of the parties present or represented, voted in favor thereof, excepting The King Powder Company; Mr. O. E. Peters declaring that he would not vote

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5110

Jonathan Haskell—Direct

or commit his Company to the payment of any sum of money."

Q. Do you remember the Globe Powder Company, Mr. Haskell? A. I remember the Globe Powder Works were purchased.

Q. What was the purpose of purchasing those works? A. I don't recall at this time. It was a very small plant in western Pennsylvania.

5111 Q. And the expense of that purchase was shared by the Association? A. Apparently not, because the King Company declined to pay.

Q. All except the King? A. I don't know how it was eventually taken care of. I imagine it was.

Q. I read further:

"Considering the question of making some arrangement with the Indiana Powder Company, which may in some measure restrict its competition in the future:

"At the General meeting held April 21st, 1898, this subject was committed to the Advisory Committee, with power to act.

5112 "On April 22nd, the Advisory Committee appointed two persons, as a Committee, representing it, to confer with some of the members of the Indiana Powder Company, and said Committee of two now made a verbal report of progress, which was considered.

"On motion of Mr. Fay, seconded by Mr. Haskell, That the Committee heretofore appointed to deal with the Indiana Powder Company be authorized to act in this matter, with power in full degree, and we bind ourselves to abide by the result.

"On this motion the roll was called and all of the parties present or represented, voted in favor thereof.

"The King Powder Company having made application to the Advisory Committee for permission to contract with the Texas and Pacific Coal

Company, and the Committee having referred this application to this meeting:

"There was discussion upon the subject, and afterward Mr. O. E. Peters withdrew said application."

Q. Do you remember having taken such action with regard to the Indiana Powder Company at that time? A. I do not.

Q. Do you remember about the appointment of any committee at all in reference to that matter?

A. I have not any recollection regarding the appointment of a committee. 5114

Q. Did you have anything yourself to do in regard to the conduct of the negotiations subsequently had with the Indiana Powder Company to purchase the plant? A. Yes.

Q. What did you do in that matter? A. I was one of those who met the representatives of the Indiana Powder Company at the time the purchase was finally made. They had approached us two or three times before to buy them out.

Q. Yes. Who were the parties with whom you negotiated at that time? A. There were two or three. I recollect two of them. Mr. Tally and Mr. Rood. 5115

Q. When was it that they first approached you to buy them out? A. I don't remember the date.

Q. Can you remember approximately? A. My recollection is they approached us about every year.

Q. They came right along? A. Yes.

Q. You were in active contest with them, were you not, for the business? A. They were competitors of ours.

Q. And you were contesting actively with them, were you not? A. We were trying for the business just as they were.

Q. And you were trying to put them out of business, were you? A. No.

5116

Jonathan Haskell—Direct

Q. You were trying to get the business away from them, weren't you? A. We were trying to get some business for ourselves, just as every other powder company was.

Q. You were trying to get the business from the Indiana Powder Company and you were cutting prices with them in order to get the business? A. Our chief endeavor was to keep them from getting business from us.

5117 Q. And in doing so you cut prices? A. We never made any lower price than others were selling to the same customers.

Q. Do you know that? A. That is my recollection.

Q. You are only stating from recollection and not what you know, is that right?

Mr. McCarter: What else could he rely on?

Mr. Katzenbach: You know that, do you not?

5118 The Witness: I know I never authorized any sale to any customer knowingly at a lower price than some one else was offering that customer.

Q. I see. That applies to everybody? A. Yes.

Q. In this matter of the Indiana Powder Company—please confine yourself to that for a while—you say you never authorized any prices. What power did you have at that time to authorize prices to be made with the customers which the Indiana Powder Company had? A. Some of the customers of the Indiana Powder Company were under contract; others were not.

Q. Just a moment. Will you please answer that question, what power you had in that matter? You say you never authorized these prices. Were you

in control of the matter of fixing the prices at that time which were to be made to the customers of the Indiana Powder Company? A. I was a member of the special committee and at times authorized prices to the customers of the Indiana Powder Company. I was also president of the Indiana Company and authorized the prices which it should make.

Q. Were you the only person who had the power to authorize those prices? A. No.

Q. Who were the others? A. The advisory committee could authorize prices, but as a matter of fact during the period of the competition of the Indiana Powder Company most of the prices were made for carload lots by authority or advice of the special committee consisting of Mr. Eugene du Pont and myself.

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Q. How long was it that this competition continued between the Indiana Powder Company and the members of the Association? A. The competition of the Indiana Powder Company and the companies that you call members of the association continued as long as the Indiana Powder Company existed.

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Q. You say the companies that I call members of the association. I don't want to call anything a member of the association that you do not understand to be. So you must correct me in that and if you see my question goes to that extent I wish you would. The companies that you were representing at that time that were in competition with the Indiana Powder Company were members of the Association, were they not. A. Your question is so broad—At what time?

Q. The time when you say you were making prices in competition with the Indiana Powder Company. A. At the time I was making prices in

5122

Jonathan Haskell—Direct

competition with the Indiana Powder Company, in my capacity as a member of the special committee, that was before its acquisition by certain companies with which I was connected.

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Q. Now if you will confine yourself to this point. You have stated you have made the prices which were made to the customers of the Indiana Powder Company and that you never knowingly made or authorized a price to be made at less than the price of the Indiana Powder Company. Now I want to know whom you represented at that time other than yourself, if anybody? A. I don't think I made the statement that I never authorized prices lower to the customers of the Indiana Powder Company than the Indiana Powder Company made.

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Q. Then will you say what do you want to say on that subject, so as to make that clear? Who was it that made the prices that were made at that time to the customers of the Indiana Powder Company or to any other person from whom the Indiana Powder Company endeavored to get business? A. I understand the question to refer to this earlier stage of the Indiana Powder Company's existence when it was in competition.

Q. No, I want it to go to all the time that you say you made those prices or had anything to do with making those prices. I want you to testify of your own knowledge as to what those prices were and not what somebody told you, if anybody did tell you anything. A. Your previous question was broad enough to include the whole history of the Indiana Powder Company.

The Court: I think you ought to define the period you want information about. During the time the Indiana Company was in competition—he asked you whether you did not mean that limited period.

Q. That is the period I mean, Mr. Haskell. A. At that period the prices made by the so-called associated powder companies were recommended by the Special Committee of which I was a member.

Q. And that is what you mean; and it was the members of the Association that you were representing when you made those prices. Is that right?

A. Your previous question embraced a very much larger period and I answered it categorically.

(Question repeated.)

A. That was not what I meant when I answered the previous question, which I understood covered a larger period.

5126

Q. I am not asking now about the previous question.

Mr. Graham: I think he ought to have the privilege of explaining that, because the use of the word "customers" of the Indiana Powder Company here has led to confusion.

The Court: He has himself limited it to the time when they were competitors. It is during that period to which this question relates.

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The Witness: I understood counsel to ask me a question regarding my previous answer.

Q. No, not at all. I will ask you the question again in order to get it clear. I want to know who it was that you represented at the time when you made prices to the customers of the Indiana Powder company, during the time that you were in competition with the Indiana Powder Company. Whom did you represent? A. I was a member of the Special Committee appointed by the Advisory Committee.

Q. And then you represented the members of the

Association, did you not? A. If you consider that the Association existed, I presume I did.

Q. You yourself have testified that there was an agreement between the members of the Association and that you were acting upon an Advisory Committee that was representing the Association, and a Special Committee. Now, what I am trying to find out is whether you were representing the members of the Association when you made those prices?

5129 A. I am in doubt as to the correctness of the term "Association"; but if you mean these powder companies that we have recited as participating in the 1896 agreement, yes.

Q. Very well, that is sufficient. At the time when you purchased the Indiana Powder Company did the prices of black blasting powder increase in the district where the Indiana Powder Company had previously operated? A. I don't recollect, but I believe not.

Q. You think it did not increase at all? A. I don't recollect.

5130 Q. Do you remember with reference to the Chattanooga Powder Company, whether or not after they came into the Association the prices in the district where the Chattanooga Powder Company operated increased or decreased or remained stationary? A. They did.

Q. How about it; did they increase? A. Yes.

Q. Very materially? A. Yes.

Q. How much? A. I recollect the initial increase of 25 cents a keg.

Q. And after that it continued to increase, did it not? A. I think another five or ten cents, I don't remember which.

The Court(to the witness): When was that, what period?

The Witness: After the Chattanooga Powder Company entered the 1896 agreement.

Q. There was a general advance of prices, was there not, at the time the 1896 agreement was made?

A. Yes.

Q. All over the country? A. Yes.

Q. And do you remember what that general advance was, generally speaking? A. I have stated my recollection is that it was at first 25 cents a keg.

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Q. And you want that answer to apply to all the business—— A. Yes, that was quite general.

Q. You had another competitor a short time after that, did you not, known as the Birmingham Powder Company? A. I don't know whether the Birmingham Powder Company was after that or before it. I thought it was before.

Q. At any rate, whether it was before or afterwards, you acquired ultimately the property of the Birmingham Powder Company, did you not? A. Yes.

Q. And after you acquired that the prices were increased in that district, were they not? A. I think they were, yes.

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Q. How much? A. I don't remember.

Q. After the acquirement of the Indiana Powder Company you were not certain whether their prices were increased or not? A. I don't recollect; I believe not.

Q. What did you pay for the property of the Indiana Powder Company that you purchased? A. I don't remember.

Q. Have you any recollection about it at all? A. Not the slightest.

Q. Would you remember the figure if it should be given to you. Have you ever heard the figure? A.

5134

Jonathan Haskell—Direct

I heard it at the time undoubtedly; several hundred thousand dollars.

Q. I beg your pardon? A. I know the amount was several hundred thousand dollars, but how much I don't recollect.

Q. What had been the price of black blasting powder in the territory in which the Birmingham plant operated previous to its acquirement; do you recall? A. No.

5135 Q. I will ask you to state whether or not after it was acquired the price immediately rose to \$1.35? A. I don't recollect the price at all.

Q. It was taken into the Association and given a definite allotment, was it not? A. Yes.

Q. And after that its plant was materially increased and continued in business? A. I don't think it was increased.

Q. It continued in business, did it, for some time? A. Yes, until a new plant was built nearby and that plant dismantled.

5136 Q. I read the minutes of the 9th of February, 1899, at page 1184. Among those present was Mr. J. A. Haskell.

"Considering the matter of devising some method for ameliorating the conditions now existing by reason of the injurious competition in the trade due to the active measures of the Indiana Powder Company:

"Mr. Eugene du Pont, as Chairman of the Committee heretofore appointed for consideration of this matter, reported verbally and also read some letters relating to the subject, and

"On motion of Mr. Fay, seconded by Mr. G. M. Peters

"That the report of the Committee be accepted. Carried.

"The motion of Mr. G. M. Peters, seconded by Mr. Fay.

"That this Committee be now discharged. Carried unanimously.

"After some further discussion

"On motion of Mr. G. M. Peters, seconded by Mr. Coleman

"That a new Committee be appointed to consist of five persons with Mr. Eugene du Pont as Chairman, and that they be empowered if they find a way open to continue negotiations with the Indiana Powder Company now, or in the future, and if they are firmly convinced that they cannot come to an agreement, they shall then undertake to recommend to the Associated Companies a line of policy which they deem to be desirable in dealing with this question."

5138

Q. Now, you state that the Indiana Powder Company made the overtures to you to buy them out?

A. Yes.

Q. Did your committee at any time make any advances towards them or suggestions that the contest might be ended by purchase? A. It was never necessary to make any advances.

Q. You stated, as I understood you, Mr. Haskell, that the advances were made by the Indiana Powder Company. I assume you meant by that some officer, Mr. Rood or somebody else, as possible persons with whom you had dealings. Now, did they alone make the advances or did you make advances to them on behalf of the associates? A. My recollection is that different individuals connected with the Indiana Powder Company, as large stockholders, made advances from time to time, as I have before stated, and that one of the times they came to us we discussed and settled a purchase.

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Q. Then you had nothing to do with making any advances to them? A. No.

Q. You simply kept up the contest until they came to you? (Objection overruled. A. We kept

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Jonathan Haskell—Direct

up the business of selling powder to Indiana customers where we could get them, which was very seldom, and anyone else until the time came when they approached us with the view to selling out and the particular time when we actually did make a purchase of the property.

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Q. And that same answer applies, does it not, to the contest, rather, if that term is objectionable, to the period of competition which you had with the Chattanooga Powder Company and the Birmingham Powder Company? A. I don't recall at all how it came about that the purchase of the Chattanooga Powder Company was made. I do recall, however, it being brought to our attention that the Birmingham Company were then ready, as they had expressed themselves several times, to sell out. They had sold out once before and they had organized this new company and were ready to sell out again.

Q. And they came to you and after negotiations you bought them out? A. Yes.

5142

Q. I will read the rest of these minutes.

(Reading): "On this motion the roll was called and all of the parties, present or represented, voted in favor thereof, and the Chairman declared the motion carried unanimously.

"The Chairman appointed on this Committee:

"Mr. Eugene du Pont, Mr. G. M. Peters,

"Mr. J. A. Haskell, Mr. F. W. Olin,

"Mr. A. O. Fay."

Q. Mr. F. W. Olin was the president of the Equitable Company, was he not? A. Yes.

Q. And Mr. G. M. Peters was the president of the King Powder Company? A. Yes.

Q. And Mr. Fay was president of the American and Miami Companies? A. Yes.

Q. And Mr. du Pont was president of the du Pont Companies? A. Yes.

Q. I read further:

"There was some discussion of the question of fixing an allotment for said Company with the idea that the operation of this plan would be to return eventually to those who have been assessed the sums that they are to pay at this time.

"On motion of Mr. Haskell, duly seconded

"That an allotment of 18,000 kegs of Blasting Powder shall be made to the Globe interest, and that the proceeds arising therefrom at the time of the quarterly settlements will be for the benefit of those who have submitted to this assessment, and that when such benefits shall have been sufficient to counterbalance the sum paid on such assessments, then the said allotment of 18,000 kegs shall cease and determine. The allotment thus made to the Globe Powder Company shall be to begin with January 1st, 1899.

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"On this motion the roll was called and all the parties, present or represented, voted in favor thereof, and the Chairman declared the motion carried unanimously."

Q. This was the same Globe Powder Company matter to which we referred awhile ago, was it?

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A. I understand it was.

Q. And that is the allotment that was made upon them? A. (No answer.)

Q. I will ask you whether or not you know Mr. R. S. Waddell? A. I know him slightly.

Q. How long have you known him? A. I knew him first as Cincinnati agent of the Rapauno Chemical Company, at the time I was president in 1892 and 1893.

Q. And you have known him pretty continuously since that time, have you? A. I have met him perhaps a half dozen times.

Q. During the time when you first considered entering the black blasting powder trade in 1895,

if I am correct in that, did you at time have conferences with Mr. Waddell about going into that association? A. I don't recall any.

Q. Did he advise you in any way that it would be a good thing for you to do, to go into the association? A. I don't recall any conversation of the kind.

Q. Do you know anything about his consulting with you in regard to the origin and formation of this association which has been discussed here?

5147

A. I cannot recall any conversation with him at all.

Q. Did he at any time exercise any influence over you in that matter? A. Not the slightest.

Q. Did he exercise any influence over you in going into the association? A. No.

Q. Do you know any member of the association or that afterwards became a member of the association that Mr. Waddell did exercise any influence over in getting him into the association? A. He was agent of the du Pont and Hazard Companies. I suppose he influenced them to a certain extent.

5148

Q. He influenced them, you think? A. He may have; I don't know how much.

Q. You personally do not know of any member he influenced? A. No.

Q. Did he attend any meetings of the advisory committee that you know of? A. Not that I know of.

Q. Did he at any time come there and advise you to make the prices you made from time to time? A. Never.

Q. Did he make any suggestions to any of the other members of the advisory committee? A. I don't know about any suggestion he may have made to any other person.

Q. In regard to the Indiana Powder Company

matter, did you have any consultations with him in regard to that? A. I never have that I can recollect.

Q. Do you know of any influence he exerted over you or the associates in regard to the making of prices in that Indiana Powder Company matter? A. No.

Q. Did he influence you in any way to buy out the Indiana Powder Company and pay a good price for it? A. No, sir.

Q. Do you know whether he influenced any of the other persons that were engaged at that time in negotiating with the Indiana Powder Company at that time to buy it out? A. I do not.

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Q. Do you know at any time whether he attended any general meetings of the association? A. He may have attended one of the general meetings of the association after he came to Wilmington as a member of the sales department of du Pont & Company. I don't recollect whether or not he did.

Q. If so, did he represent the du Pont interests, at that time? A. I should think not.

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Q. Whose interests did he represent A. I should think he was merely there as an observer.

Q. Oh, yes. Did you ever hear him make any addresses to the association? A. Not that I recollect.

Q. Did he ever make any recommendations in the meetings in any way? A. I cannot recall any.

Q. In 1905 it is in evidence here that about May of that year there was a price made which obtained in certain localities of 95 cents for black blasting powder. Do you know anything about the time referred to? A. I don't know the exact time at which a 95 cent price was made. I know it was made.

Q. At that time you were in active charge and control of the affairs of the sales board, were you not? A. In 1905, yes.

Q. And you were keeping very close tab on that?
A. In the summer of 1905 I was in Europe.

Q. In May, 1905, were you in Europe? A. I went abroad, I think, about the middle of May, 1905.

Q. Yes. Well, you were there as early as January, 1905, were you not? A. Yes.

Q. Do you know anything about a man then in the employ of the company by the name of David S. Brewster? A. Yes.

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Q. What position did he occupy? A. He was agent for Joplin at one time, and he was afterwards an assistant in the sales department in Wilmington, I believe.

Q. What particular division of the sales department did he preside in or serve in? A. I don't recall.

Q. Was it not in what was known as the competitive division? A. It may have been. I don't recall. He was simply a clerk.

5154

Q. You did have such a division, did you not? A. Yes. There was at that time. I don't know whether there is still.

Q. I am speaking of that time. You did then have such a department? A. Yes.

Q. At that time, Mr. Brewster was connected with that department, was he not? A. I don't recall.

Q. Do you recall a conversation that you had with Mr. Brewster early in 1905 in which you gave him instructions to make an examination of competitive conditions in the middle West and make a report to you concerning that matter? A. I don't recall it.

Q. You have no recollection of it at all? A. No.

Q. Was any report made to you by anybody at that time concerning competitive conditions in that district? A. I have received many reports. I don't recall any particular ones—

Q. I mean any general report. A. Not that I recall.

Q. You have no recollection of it at all? A. No.

Q. Was that report made to you two or three months after it had been prepared? A. If I cannot recall it I cannot tell when it was made.

Q. I am asking you as a matter of time. I thought perhaps you were limiting it to January.

Q. Well, did you receive it from anybody? A. I don't recall. I received many reports and I cannot discover which you mean.

5156

Q. Did you have any report made to you at any time by any person in your employ in connection with the competitive division or otherwise operating under the sales department with reference to competitive conditions which obtained in the middle west at that time? A. I have had many reports made on competitive conditions. Regarding any particular one I cannot recall at the moment.

Q. Was there any person at that time to whom you gave instructions to make an investigation of the competitive conditions which were prevailing in the Middle West and make a thorough examination of your accounts and your reports to ascertain what the facts were and present those facts to you in proper form for consideration? A. I don't recall it.

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Q. You don't recall it? A. No

Q. You don't recall ever having considered any such report? A. I cannot recall ever having considered any particular report.

Q. Did you consider a series of reports on that subject then, Mr. Haskell? A. There never was any series of reports. There were reports given me on all kinds of subjects and many reports asked for, and I don't recollect any particular one.

Q. At the time when you made that 95 cent price,

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Jonathan Haskell—Direct

Mr. Haskell, it was a very considerable reduction, was it not, from the prices which had then been prevailing? (Objection overruled.) A. What 95 cent price?

Q. I am asking for the 95 cent price which was made in 1905 and which obtained until a period in 1907. You know about such a price as that having been made, do you not? A. I know that such a price was made to several concerns.

Q. By "several"— A. To several concerns.

5159

Q. By "several" what am I to understand you to mean? A. Such a price was made to several customers.

Q. Will you state what you mean by "several" in that connection—how many? A. I don't know how many.

Q. Was it as many as ten? A. I presume it may have been; I don't know.

Q. Was it made with as many as 200? A. I should think not. It was made, as I recollect it, to a few important customers.

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Q. I show you plaintiff's exhibit 1248 and will state to you beforehand this is a document which was presented here and offered here in evidence through Mr. Coyne, a statement that was prepared by him under his direction, and which is now in evidence here. I will ask you to examine it and state whether or not from that you can assist your recollection as to the number of customers to which that 95 cent price was made.

The Court: The number is already in evidence, is it not?

A. I have no independent recollection of this paper. The number of customers I do not remember. I know it was not a general price and I am under

the impression that it was only made to a comparatively few important customers.

Q. Can you recall who those comparatively few important customers were? A. I cannot.

Q. Why was it made to those comparatively few important customers? A. Because as far as I can recollect 95 cents was the lowest price we sold to anyone, and we only sold at that price because others were already underselling us or offering our customers at that price and were forced to come to it in some instances.

5162

Q. And it was the particular customers to whom prices of 95 cents had been made by other manufacturers of black blasting powder that you made this price of 95 cents. Is that right? A. Those to whom they either had made or were making.

Q. Where did you get the information upon which you based your calculations or your knowledge, we will say, of what those other companies were doing in regard to making prices? A. The information was derived from the salesmen or branch office manager in charge of the office, and was transmitted to the general sales department in Wilmington through the division that handled that territory.

5163

Q. Was there a time, any time, prior to May 5, 1905, after you became the head of the sales board, when you made a 95 cent price to any customer? A. I don't recall the exact date that the first 95 cent price was made.

Q. If Mr. Coyne says it was made on the 5th day of May, 1905, would that be sufficient authority for you as to the date? A. I should accept any statement presented by Mr. Coyne here as authoritative.

Q. Very well. Then, if that is what is stated on this exhibit 1248, you would accept that, would you, as being correct? A. I should say so.

5164

Jonathan Haskell—Direct

Q. Do you know of any customer to whom the price of 95 cents was made at any time prior to May 5, 1905? A. I don't recall the names of any customers to whom it was made.

Q. If Mr. Coyne's statement shows that the last 95 per cent. price which was made to a customer was on October 8, 1907, then that is the correct date, is it, upon which the last 95 per cent price was made? A. If Mr. Coyne says so I should say it is correct.

5165

Q. All right. What was the reason for your ceasing on that date to make the price of 95 cents to any of your customers? A. The price of raw materials had advanced to such a plane that it was necessary to advance the price on black powder, and in 1907 we did so.

Q. The matter of competition did not make any difference to you as long as the cost of manufacturing had gone up? A. I felt at the time that we had delayed the advance in the price too long, that we ought to have made it before that. The price of raw materials had gone up very, very much.

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Q. It had gone up quite a little time before that, had it not? A. I don't recall the time when nitrate of soda went up first, but it was some time in 1907, and we had information that in 1908 it was likely to be still higher.

Q. When was it you issued your first regular price list? A. That was issued after I relinquished charge of the sales department; I don't recall exactly.

Q. Some time in 1907, was it not? A. That is my impression.

Q. And since that time you have been issuing regular price lists? A. I believe so.

Q. Previous to that time, however, did you at any time have any regular price list which was accessible to your customers and the public generally?

A. I don't think there were any printed price lists excepting for sporting powder prior to the 1907 price list.

Q. I want to ask you a little about the system which I believe it has been stated you know something about, and that is the system called the trade report system. Did you have anything to do with the origination of that system in the business of dynamite, Mr. Haskell? A. Yes, sir.

Q. When did you originate it? A. In the summer of 1892.

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Q. How long after that was it continued exclusively in the dynamite trade? A. Until I took the presidency of the Laflin and Rand Powder Company and then afterwards did it come into the possession or use of the du Pont Powder Company? A. It was transferred—your first question was how long it continued to be exclusively employed.

Q. Well, it was extended to the Laflin and Rand Company? A. It was extended to the Laflin and Rand Company.

Q. And was afterwards extended to the du Pont Company? A. Yes.

5169

Q. And has since been continued there. You are familiar with the system, are you, at the present time? A. I cannot say that I am.

Q. Were you familiar with it during 1903 to 1908? A. Yes.

Q. I show you plaintiff's identification No. 463 and ask you to look at it and state whether or not that is one of the trade reports.

Mr. Katzenbach: You offer these trade reports in evidence, do you?

Mr. Abbott: I am going to offer them in evidence.

A. (After examination) It seems to be.

5170

Jonathan Haskell—Direct

Q. Well, while counsel is looking at that I show you another one, which is plaintiff's identification No. 461, and ask you to state whether that is a trade report? A. (After examination.) It seems to be.

Q. I show you No. 463 again and ask you to state what that big red stamp indicates there, the word "competition." What does that mean? A. It would require quite an extended explanation, if I may give it—

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Q. I would like to hear your explanation. Not that particular one but whatever is represented by that stamp on there? A. There was a sub-division created by me in the sales department called the competitive division, for the purpose of carrying on with the branch offices correspondence pertaining to sales matters where the trade had passed from the Powder Company to a competitor. At that time the Powder Company had a very considerable portion of the business, very much more than it was possible to get from any competitors, and it was my desire that the heads of the several sub-divisions—Eastern, Central and Western Divisions—should be free from the care and annoyance which would pertain to the trade that we did not have, because the trade we had was so much more important than the trade that was in the hands of competitors. For that reason a competitive division was formed. Immediately thereafter each salesman was furnished with blank forms of trade reports, so that one copy could be marked "competition" in the case of those customers that no longer were sold by the company and in order that it might go automatically to the competitive division instead of going through the ordinary divisions which were not then interested in its care. Hence the stamp "competition" on the trade reports.

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Q. I will ask you whether or not the color of the stamp had anything to do with the matter? A. I don't think it had.

Q. I notice that this word "competition" on No. 463 is in red. I show you 461 and I notice that the word competition there is in blue. Will you state what, if any, reason there is for that? A. I don't know why it was.

Q. Now I show you plaintiff's exhibit for identification No. 226 and I show you a stamp in red ink "trade record division." The word "competition" 5174 does not appear on there. Will you state what the distinction between that and the other two is? A. This is a form that was provided in order that it might go into the files of the trade record division. Each salesman made out two or three copies of the trade forms.

Q. As I understand it, then, this No. 226, with the words "Trade record division" on it is simply a record which goes into your files? A. Which should go into our files. That one evidently has not gone into the files.

Q. No. 461 and 463, with the word "competition" 5175 stamped in large letters indicates that there is something more to be done with that; is that right? And therefore it does not go immediately to the trade record division? A. It is simply a stamp for clerical purposes, in order that it may go to one division rather than to another.

Plaintiff's identification 226, 461 and 463 offered and received in evidence.

Q. I notice the word "active" left there, the other words being marked out. What does that word "active" mean, of what particular importance is that, if any, on the trade report? A. I don't recall why that was put on. That was after I left the sales department.

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Jonathan Haskell—Direct

Q. I want to show you plaintiff's identification 188 and ask you to look at it and state whether you recognize that as one of the trade reports. A. (After examination): Yes.

Q. You will note that that has a red arrow on it. Does that suggest anything to your mind as to what the purpose of that mark is? A. It purports to be a rubber stamp, showing that this printed report had had attention in Chicago.

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Q. Does that mean that there is another record which is final as to any matters indicated upon that report, which record is at Chicago? A. Each salesman in making a trade report made two or three copies, one copy of which was retained in the branch office; the other one or two copies being sent to Wilmington for the Wilmington office.

Q. Then any information that there would be in the Chicago office with reference to that matter would be in your office also? A. Not necessarily.

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Q. Then will you please indicate what is the reason for the arrow, an important mark like that, calling your attention to the fact that this is receiving attention in Chicago? A. I am unable to state the particular significance of this stamp because I have never seen a trade report with it on before, but presume it must be some clerical means attached by the Chicago office.

Q. Yes. Now I show you plaintiff's identification 205 and ask you to look at it and state what is meant by the words "part competition" on that paper? A. I should take it to mean that part of the trade was held by our company and part by a competitor.

Q. Who was the competitor? A. From the trade report it would appear that the Buckeye was the competitor.

Q. So as to that, part of it was held by the Buck-

eye Powder Company, that is the competition company and that is the competition? A. I suppose so.

Q. And goes to the competition desk? A. I presume it did.

Q. In making up the information that appears upon the various trade reports which have been placed among the records of your office, where does that information come from? As you have already stated, it comes from your various agents, but where do they secure the information, as a rule?

A. From the customer.

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Q. Always from the customer? A. As a rule.

Q. You say as a rule. Do they go outside at any time in any way to get information which would be reported to you? A. Naturally the salesmen visiting a customer at a certain place in the course of conversation would elicit information if they could regarding other probable buyers in that locality.

Q. Take, for instance, the class of information that you wanted to get. Any kind of information that they might think would be useful they are instructed to send in to you, are they not? A. The only kind of information the trade reports were intended to produce were the buyers of explosives of various kinds, the prices at which those buyers were buying, if they could get it, and the source of supply.

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Q. You only wanted facts, did you? A. That is all we wanted.

Q. Did they have instructions at times to secure gossip and rumor? (Objection overruled.) A. We had no desire to secure anything but the facts; nothing else could give us any assistance.

Q. Gossip and rumor might be of some assistance to you, might it not? A. I should not think so.

Mr. Katzenbach: I object to that.

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Jonathan Haskell—Direct

The Court: That is argument, gentlemen. The question is whether they elicited it, not whether it would be useful but whether they obtained it.

Mr. Abbott: He said he wanted useful information and I asked if they obtained it, so it would come within that class.

Q. I call your attention to Plaintiff's Exhibit No. 1146 and ask you to look at it. It has already been
5183 read and there is no need of taking up the time of the witness in reading it.

Mr. Katzenbach: What book is that?

Mr. Abbott: This is Volume I of Exhibits, page 228 and 229. This, if your Honor please, purports to be a letter which has already been admitted in evidence and read to the jury, written by A. J. Moxham, as Chairman, to E. I. du Pont de Nemours & Company, Wilmington, one letter, and the other is to the Hazard Powder Company, Wilmington,
5184 Delaware. Among other things he says:

"In order to give the finance committee an intelligent starting basis will you kindly forward to us at once"—and then I omit A, and then it goes on; "We would further ask that from time to time and continually you forward everything of interest that may be picked up by any one of your firm bearing on the general situation, even including gossip and rumor."

Q. Do you know anything about that condition of affairs in the company, Mr. Haskell? A. I have no particular recollection regarding the letter you speak of.

Q. Well, it is true, is it not, that information of that character is from time to time collected and

has been sent to the company for its information? (Objection overruled.) A. Naturally——

Q. When you were connected with the company and in charge of its sales department did you at any time obtain any information from railway agents with reference to shipments that had been made by various competitors to various consumers of black blasting powder? A. I have no recollection of it.

Q. If such information, information of that kind, came in, you have no knowledge of it? A. No.

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Q. Did you at any time know a man in the employ of your company by the name of P. P. Laughlin? A. I think I recollect such a man, yes.

Q. What position did he occupy? A. He was a salesman for the Ohio Powder Company and afterwards I think a salesman in the Pittsburgh office of the du Pont Company.

Q. Did he at any time have any requests from your office to obtain information as to conditions relative to customers and their affairs, and so on, and report to the Wilmington office? A. He may have. I have no recollection.

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Q. As a matter of fact did he not refuse to get the information that you wanted in that way because he considered it was a dishonorable practice?

Mr. Katzenbach: I object to that unless this is in reference to some interview with this witness had by Mr. Laughlin.

The Court: If you have personal knowledge of it.

A. I have no personal knowledge of any such thing.

Q. And is it not a fact that he resigned, gave up his position in connection with your company, because you insisted he must do that, and he declined

5188

Jonathan Haskell—Direct

to do it? A. I should say positively that that was not so.

Q. You would say it was not so? A. That would be my opinion.

Q. You are stating it merely as an opinion? A. Yes.

Q. It may be a fact notwithstanding that, may it not? A. Of course I am unable to know what was in his mind, if he did it. I do not recollect whether we discharged him or he resigned.

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Q. Well, I show you Government's Exhibit 429 on page 2781 of the rebuttal record and ask you to look at that paper and state whether or not from that you are able to refresh your memory concerning the matter. (Objection overruled.) A. I have no certain recollection concerning the matter touched upon in that letter at all.

Q. I believe you stated the other day that you kept in very close touch with everything that transpired in connection with the sales department of the Powder Company, did you not? A. As close as possible.

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Q. You know Mr. Bumstead, do you? A. Yes.

Q. From time to time when your agents were endeavoring to secure custom or business from various consumers of black blasting powder were they at any time authorized to use any influence with the managers of the coal mines to induce them to recommend your powder to their employers? A. As a rule the only way of getting the trade of a coal company, getting them to purchase powder, was to get the good will of the manager and to get him to use, if he would, his influence, which would lead either to the continuance of the purchase or its adoption, if it was not then being sold.

Q. Did not that effort sometimes extend to the point of giving the mine manager a commission or making a payment to him in some way upon the

powder which his employer would use? A. I have no recollection of any payments of commissions to anyone, although at times cases of shells were given.

Q. (Taking up book) This was a meeting of the Advisory Committee at which it was stated that Mr. T. C. du Pont was elected a member of the Advisory Committee in place of Mr. Eugene du Pont, deceased. A. I don't recall it.

Q. At that meeting it was stated that a committee of three would be appointed by the chairman to formulate a plan for organization of the Storage and Transportaiton Company suggested in the report, conferring in the matter with a representative of the Wilmington High Explosives Company, to report to the next meeting, and it was carried. The chair appointed as such committee Messrs. T. C. du Pont, J. A. Haskell and A. Lent. Now do you recall it? On Page 1416, as part of the minutes of the meeting, there appears the following:

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"Continental Coal Company, Columbus, Ohio, for mines owned or controlled by it, and such other mines as it may hereafter acquire or control during the term of the contract, at \$1.10 a keg, with an allowance of five cents per keg to the general manager of the company; the contract to terminate July 11th, 1902."

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Do you recall that matter that transpired that day? A. I do not.

Q. Can you conceive of any reason why the general manager of the company should be allowed five cents per keg in that case? A. I presume that it was an additional reduction in price.

Q. How would it be a reduction in price if it went to the general manager of the company. It was not for the benefit of the company, was it? A. It might have been.

Q. It might have been, but can you state any reason for having allowed the company a rebate in that way? A. I do not recall the circumstances upon which the price was based.

Q. The Continental Coal Company was a very large consumer of powder, was it not? A. I don't know. I don't recall it at all.

Q. Do you not know that it was one of the most important coal operating concerns in the State of Ohio? A. I do not recollect it.

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Q. Now, I call your attention to the meeting of June 25, 1902, which is reported on page 1436 and the following pages, and I call attention to the following on page 1437 and page 1438:

"The Miami Powder Company was recommended to renew its contracts with Mr. Harry Olmstead, covering the Sunday Creek Coal Company and other concerns, and with the Continental Coal Company, which contracts expire in July next, making new contracts, either individually or collectively, to cover this trade (for a term of one or more years, in the discretion of the Miami Company) at \$1.10 per keg, allowing a commission of five cents per keg to the managers of the concern or concerns as the case may be." (Objection overruled.)

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Q. Do you remember that matter? A. I have an indistinct recollection that a special arrangement was made with the Miami Company to allow permission to a man named Olmstead, because of the very large aggregation of trade which chose to buy through him and he placed their orders.

Q. Was Mr. Olmstead manager of the Continental Company and the Sunday Creek Company? A. I have no knowledge of his business connections.

Q. Do you not know as a matter of fact that Mr. Olmstead had nothing to do with those companies? A. I have no knowledge of Mr. Olmstead's affiliations.

Q. Do you not know that the manager of the Sunday Creek Coal Company at that time was J. H. Winder? A. I do not.

Q. Do you not know as a matter of fact that Mr. Guthrie was the manager of the Continental Coal Company at that time? A. No.

Q. Mr. Olmstead was nothing more nor less than a seller of powder to the various consumers of powder in that district? A. I have no recollection whatever what he was. I merely recollect his name in connection with a price being made.

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Q. The Sunday Creek Coal Company was a very large consumer of powder, was it not? A. I don't know.

Q. Did it not consume as much as 75,000 kegs of powder a year? A. I have not the remotest idea what it consumed.

Q. There was a practice, was there not, between the association during the time of the existence of the Association of respecting each other's trade? A. What Association and at what time?

Q. I am speaking of the Gunpowder Trade Association, at the time when it was in existence, from 1896 down to 1904. A. My individual effort was to make such an arrangement, and it resulted in it being done to a limited extent.

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Q. Now, what was it, how was that trade respected; will you kindly tell us? A. I cannot in a general way at all, excepting the competition when I became president of the Laflin and Rand Company was very much more keen between the du Pont, Laflin and Rand and other so-called associate companies than it was with the outside competitors.

Q. That was at the time when the association had told each member to defend its own trade, was it not? A. Yes.

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Jonathan Haskell—Direct

Q. They were defending their own trade at that time? A. Yes.

Q. Now, will you tell us what is meant by the term "respecting each other's trade"? A. At what time?

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Q. I said during the existence of this Association of which you said you were a member from 1896 down to 1904, inclusive. Will you state what you meant by respecting the trade, by the members of the association, which was organized in 1896 and continued down to 1904? A. Prior to that date——

Q. No, I don't want prior to that date. I want to know now about this date. I am inquiring about the Association, how it respected its trade, the trade of its members. A. I cannot answer the question without the reason which led to my joining in an effort to do what you say.

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Q. That is not the question I am asking. I am not asking you at this time for your reason; I want to know how it was done, the manner in which it was done. You can tell that, can you not, how you respected each other's trade? A. The only way the trade was respected after the making of the 1896 agreement was through the instrumentality of certain prices being made to individual companies which were not made to others.

Q. Yes. Now would you indicate whether or not there was at any time a respecting of the trade of a particular customer or the trade that another association had with a particular customer? A. There was never any objection, provided the sale could be made at the schedule price, or at an equal price according to the recommendations of the special committee or advisory committee, to any associate soliciting another customer's trade.

Q. Oh, there was no objection to that at all? A. Not the slightest.

Q. And it never was done? A. It always was done, always solicited each other's trade——

Q. I see. And there was no complaint made when they got a customer away from another member? A. There was always complaint made by dissatisfied agents who could not do all the business.

Q. I see. Now, in the carrying out of that rule you have just indicated, did you have any arrangement between the members of the association whereby a particular member of the association should have an equity in a contract made by another member of the association? A. Yes. 5204

Q. Tell us what that equity was, will you? A. When the making of contracts was resumed in 1897 the advice to the several members of the Association to make lower than schedule prices was based upon the quantity purchased by such buyers during a certain specified time, and also who had held that trade, I think, during the two years' period then preceding, the aim being to have those companies that held the trade make the appropriate price for the size of the trade, and to prevent agents by underhand or other methods diverting from the concern whose powder was liked and whose business it had acquired, and apparently had still retained. 5205

Q. No effort was made to get that business; was that the idea? A. He was permitted to make all the efforts he chose. He was not permitted to go below certain prices.

Q. Tell me where your rules of equity came in as applied to that particular case. A. The rule of equity came in in this wise. It was generally not possible that more than one concern could make a contract with a given individual buyer, and it was arranged that if a particular concern was permitted to make a contract, if another concern had

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Jonathan Haskell—Direct

sold that same buyer powder during the test period, that an effort should be made to get that buyer to use that amount which that other concern would be entitled to sell. Failing in that, equities were exchanged so a given concern might trade an equity in one trade for an equity in another trade and make a contract which would cover all the equities of the case.

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Q. Now then, when the contract was once made with a customer by one of the members of the association, was not that contract respected permanently after that period and was not that particular associate permitted to make renewals of that particular contract from time to time? A. As a rule the previous seller was authorized to make whatever prices were necessary to continue to hold that trade.

Q. Yes, he was to continue to hold that trade.

A. As merely against the other associates, however.

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Q. I show you Plaintiff's Exhibit 26 and ask you to look at it and state if you know what that paper is? A. (After examination) A letter addressed by me to Mr. J. G. Miller under date of August 26, 1895.

Q. And has your signature attached to it? A. Yes.

Q. I read you the following part of this letter:

"From time to time trade reports calls will be sent out and we would indicate policy to be pursued in certain cases as far as local conditions will permit.

"While we are very anxious to enlarge our trade and agents will use their utmost endeavors to achieve that end, it is not worth while to divert trade from associate companies such as du Pont, Hazard, Oriental, Ohio, etc., by cutting prices, as

such a course will probably result in their meeting the price or perhaps cutting it and regaining the trade which merely hurts the former seller and does no one any good excepting the buyer."

Q. Does that meet your views as to what is understood as respecting the trade; does that come within the definition that you attempted to give awhile ago as respecting the trade of an associate? A. That was not what I had in mind when you asked me the question, no.

Q. What would you term that; would you not think that was respecting the trade? A. I should not think so, no.

Q. Then will you kindly distinguish it from your theory of what was respecting trade? A. That letter—

Q. Will you kindly answer that question now, just distinguish the two. I want to get this theory that has been set forth here by you and the other theory that you have announced from the stand, so as to get your idea of the difference between those two theories. I want to find out what respecting trade was during this period. A. That was instruction to my salesmen.

Q. Yes. A. The other case was a method which you said had been employed, which, as far as I can recollect, may have been employed, and indicated the one means which could have been construed as coming within the terms you indicated of respecting trade.

Q. Well, but when you say here that it is not worth while to divert trade from associate companies, such as the du Pont, Oriental, Hazard, Ohio, and so forth, by cutting prices, what did you mean by that phrase, if it was not that you wanted their trade to be respected? A. I have always given the same instructions regarding every competitor's

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Jonathan Haskell—Direct

trade, as I gave him in regard to this particular case.

Q. But you did not want him to take trade from competitors at all? A. Not by cutting prices.

Q. Oh, I see, your distinction is between taking trade and taking trade by cutting prices. But he was permitted to go out and get the trade if he could get it at the same price? A. Surely.

Q. The next sentence of the letter reads:

5213 “If, however, trade has been diverted from us we want it back and you will at the earliest opportunity examine your records carefully and make trade reports on any former customers that may have been taken from you within the last few years, explaining as fully as possible the conditions, past and present, and write asking for assistance when prices given you are not low enough to enable you to recover lost ground.” What did you mean by that, when you asked him for information of prices which would be low enough to recover lost ground?
 5214 A. I meant this. This letter was written in 1895 and this particular extract that you read is a copy of a circular letter theretofore sent to every salesman of the Laflin and Rand Powder Company. And immediately upon my assignment to the presidency of the Laflin and Rand Powder Company I narrowed the limits of control of the salesmen. Prior to that they had authority to meet any—

Q. That is going beyond my question.

Mr. Katzenbach: I beg your pardon. He is answering.

The Court: He may state that. I think when you ask him the meaning of a phrase in a letter, that you ought to let him refer to any antecedent condition.

A. (Continued:) Prior to that time salesmen

had authority to meet practically any prices that were made, and I immediately limited them to certain prices. What they were I do not recollect, but higher than the lowest prices that had been made. It was therefore necessary where an extremely low price had to be met for us to know the name of the customer, the freight rate it would take to reach that customer, before we could determine whether we would permit the salesman to sell him, and it might be that in some cases we would be willing to make a price which in other cases, owing to the higher freight rate, it would be unwise to make. Therefore we wanted them to apply to us for assistance where the prices already given were not sufficiently low to enable them to meet the prices and hold the trade, and regain trade that we had lost.

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Q. And your answer to that would be that you furnished them with a price low enough to get the trade? Is that the idea? A. Not necessarily.

Q. Well, you said that you would not be guilty of cutting a price. Now what did you mean by this when you said "and write asking for assistance when prices given you are not low enough to enable you to recover lost ground"? A. I cannot answer in any other terms than I have stated.

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Q. If you wanted them to write for prices that were low enough to recover lost ground you must have had in mind cutting a price, did you not? A. I never intended or authorized anyone to make a lower price to get or regain trade than that the customer was paying as far as I am aware.

Q. I understand that, but I want to know what you meant when you instructed your salesmen to inquire in a particular case and "write asking for assistance when prices given you are not low enough to enable you to recover lost ground"? A.

I cannot answer it any other way than I have answered.

Q. And after summing up this circular, quoting from this circular, you say: "The gist of the whole matter is that if trade has been taken from us we want it back, but we do not think it wise to divert trade from du Pont, Hazard, Miami, Austin or Oriental Companies by cutting, as that would merely lead to retaliation and do no one any good." That was your theory, was it? A. Yes.

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Q. But you respected the trade they had and did not undertake to go in and get such customers away from them, such customers as they already had?

A. At that time we were most anxious to get any customers we could.

Q. I call your attention to the meeting of the Advisory Committee of December 17, 1897, at page 1116 to 1118: (Reading) "The meeting considered the matter of the controversy between the Ohio Powder Company and the King Powder Company. Mr. Fay read a letter from the King Powder Company addressed to the members of the Advisory Committee which had been sent to him for presentation. Mr. Brown made a verbal statement of the attitude and claims of his company and the matter under treatment. After prolonged discussion the following was offered:

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"Whereas a charge was filed by The King Powder Company against the irregular action threatened by The Ohio Powder Company in connection with a contract made by The King Powder Company with the Vigo County Coal Company, The Ohio Powder Company, represented by Mr. Brown, disclaimed any intended threat in the correspondence, copies of which were presented to the Advisory Committee, declaring their purpose to have been only to make such a contract with permission given

by The King Powder Company and declared their present purpose to be to obtain only a just equity in the trade of the Vigo County Coal Company as may appear by statements of sales heretofore made by each to this Coal Company. It is therefore

“Resolved, That The Ohio Powder Company and The King Powder Company be each requested to report to the Secretary of the Advisory Committee, the quantities of Powder sold to the Vigo County Coal Company, from May 1st, 1895, to May 1st, 1897, for the purpose of enabling the Advisory Committee to determine the equities of each in this trade as requested by The Ohio Powder Company.

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“And the Advisory Committee rule that The Ohio Powder Company were unwise to ask that the equity of The Ohio Powder Company be stated in the contract, and the Advisory Committee also rule that The King Powder Company were unwise in including the Vigo County Coal Company in contract authorized to be made with Christian Ehrlich & Company, without permission first obtained from the Advisory Committee, for in no other way would Associates be furnished an opportunity to present claims for equity in the trade. Carried.

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“The Committee then proceeded to the consideration of another contention between The King Powder Company and The Ohio Powder Company on another matter of some importance.

“There was offered the following:

“Whereas The King Powder Company has charged that The Ohio Powder Company had made a contract with Mr. F. S. Peabody, The Ohio Powder Company, represented by Mr. Brown, present, stated that they had not made such a contract, although they admit that they had offered to do so, on the same terms as The King Powder Company had made, but no better, and stated that the offer was rejected by Mr. Peabody, who said he could do better; therefore it is

"Resolved, That it is the sense of the Committee that The King Powder Company should contract with Mr. F. S. Peabody for the supply of all the Powder trade of the Brazil Mining Company and the Ohio & Mississippi Valley Coal & Mining Company, with due regard to the equities of all the parties in interest, and

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"That if such equities cannot be adjusted by the parties themselves that the matter should be referred to the Advisory Committee for adjudication. Carried.

"The Ohio Powder Company having asked by letter to the Secretary for permission to contract with Bruelitts Creek Coal Company, Torrey Coal & Mining Company, Ehrman Coal Company, Ohio & Mississippi Valley Coal & Mining Company.

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"Upon consideration of the matter it appeared that the Laflin & Rand Powder Company, by a letter to the Secretary, made an objection to such a contract with the Bruelitts Creek Coal Company, but Mr. Haskell withdrew that objection, and it appearing that there might be a question as to some connection between said Company and the Indiana Bituminous Coal Company with which The Hazard Powder Company has a contract, the question for permission to make contract with this concern was deferred."

Now I call attention to the meeting of January 28, 1898, and to that part of it found on page 1151 and 1152, as follows:

"There having been a question as to the equities of The Ohio Powder Company and The King Powder Company in the trade of the Vigo County Coal Company, and the Secretary having been instructed to write to each of those Companies for information as to the sales of each, within a definite period, to this Coal Company and having answers from them, which he presented to the meeting:

"The Committee decided that The Ohio Powder Company should have sixty-one per cent. and The King Powder Company thirty-nine per cent. of the trade of the Vigo County Coal Company, and that the Secretary should communicate to each of the said Companies the statistics upon which this decision has been based.

"The Ohio Powder Company was authorized to contract with the Bruelitts Creek Coal Company, with rebate of 15c per keg."

Q. Does that in any way assist you, Mr. Haskell, in recalling the methods which were used from time to time respecting the trade and dividing up the trade between the various members of the association? A. Not if I understand your question. 5228

Q. Well, does it in any way? If you misunderstand my question, we can make it clearer. If you want me to do so I will try to make it clearer. But I want to get at the methods used by the Association in respecting the trade of each of its members, and in this rule of equities, as it is called? A. I cannot recollect any respecting of trade other than through the price fixed by the Advisory and Special Committees. 5229

Q. You had in your Association a different rule, did you not, to apply for competitors—if you please to use that term—between the members of the Association and the associate members and others who were not members of the Association, did you not? A. I don't recall any.

Q. Was there any trade of an independent or a company that was not a member of the Association, that you respected at all? A. I don't recall respecting anyone's trade in the Black Powder Association excepting through the making of prices. If there was a great deal of trade it was not on contract at all, and the salesmen of the Laflin and

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Jonathan Haskell--Direct

Rand Powder Company were at liberty to get any trade they could under the prices authorized, regardless of the holder, whether he was an associated company or a so-called outside competitor.

Q. You had a rule, did you not, concerning what was known as "inside" competition and "outside" competition? Was there any difference? A. I don't recollect any such rule.

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Q. No such rule. Do you have any knowledge of the time when Mr. T. C. du Pont was elected a member of the advisory committee? A. I recollect he was elected in the spring of 1902.

Q. Were you present at that meeting? A. I don't recollect whether I was or not, but I presume I must have been.

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Q. We have an exhibit offered in evidence here as plaintiff's exhibit 22, and I call attention to this part, on page 214: "C. That the above advance in prices be doubled provided the committee on competition will provide machinery which in the judgment of the advisory committee will restrain internal competition and which will put the question of external competition into the hands of a properly organized working committee." Now do you know anything about that matter of any rule or regulation which was for the purpose of restraining internal competition, such as you have indicated you had once in a while between your members, and the external competition? A. I don't recall anything that resulted from that particular clause.

Q. Do you not know as a matter of fact that there was a committee appointed shortly after this speech, which was known as the "Finance Committee," which was given ample powers to carry out that particular feature of Mr. Moxham's address? A. I recollect such a committee being appointed, yes.

Q. Was not that the purpose of that committee?

A. My first answer applied to the preceding clause regarding the "internal" competition. I understood that to be your question.

Q. Who were the members of that "Finance Committee?" A. I don't remember now.

Q. Were you a member of it? A. I don't remember whether I was or not. I may have been.

Q. Do you remember when Mr. Moxham became a member of the Advisory Committee? A. As I stated the other day, I do not recall the date.

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Q. Can you recall about the time? A. I think it was 1902 somewhere.

Q. It was about the time Mr. T. C. du Pont came into the affairs of the Powder Company, was it not? A. A few months later.

Q. Since that time, or, rather, at that time, and for a considerable period after that, Mr. T. C. du Pont, Mr. Pierre S. du Pont, Mr. A. J. Moxham and yourself were on various boards, were you not, of the various companies which were then in existence and controlled by the same interests. Take, for instance, the du Pont Companies and the Delaware Securities Company and the—— A. Some of them I was a member of and others I was not.

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Q. You have already stated the companies you were a member of; but I am trying to find out whether these other gentlemen were members of the same companies; that is to say, the companies that were in existence at that time. Take the Delaware Securities Company. Were they members of that company's board? A. Some of them, yes.

Q. Which ones of them? A. I cannot recall, but there were a number of different corporations in which they were directors.

Q. The Delaware Investment Company? A. I don't recall the membership of the several companies at all.

5236

Jonathan Haskell—Direct

Q. But they were members of the boards of the various companies? A. Yes——

Q. Upon which you sat? (No answer.) Do you know anything about a committee called the "Peoria Committee?" A. I have a recollection of such a committee existing but I don't remember much about it, or anything about it.

Q. Can you tell when it was appointed? A. I don't recollect.

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Q. Do you know who were the members of that committee? A. I do not.

Q. Were you a member? A. I don't know. I don't remember whether I was or not.

Q. Do you know what the "Peoria Committee" was? A. I don't recollect that.

Q. You know where Peoria is, do you not? A. Yes; it is in Illinois.

Q. That was where Mr. Waddell's Buckeye Powder Company was located, was it not? A. I so understood.

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Q. I call your attention to the meeting of the Advisory Committee of May 27, 1903 (page 1559), and call your attention to the following language:

"Whereas the Peoria Committee recommended a certain course of action as regards customers at or near Peoria, Ill., which was adopted at the meeting of the Advisory Committee, held April 17th, 1903, and which has been rescinded, be it Resolved, That Peoria be continued as a Distributing Point, and that the sale of Sporting Powder through the agents there be continued as heretofore. Concerning Blasting Powder: That on June 1st, 1903, or as soon thereafter as existing contracts with agents will permit, no allowance for haulage from railroad depot to magazine at Peoria shall be made in excess of three (3) cents per keg, and no allowance for haulage from railroad depot shall be made on any pow-

Honor to charge, under Section 98 of the

der that is not actually delivered in magazine. Furthermore, interested parties are advised that they may discontinue the present agency agreements as far as they may pertain to sales to the former customers of their agents at Peoria, using less than 1,200 kegs per annum, and heretofore being sold, presumably, at the schedule price for lots of less than carloads (\$1.50); in such cases, and to their former customers only, it shall be permitted to sell at any price in excess of \$1.25 per keg. Reports to be made to the principal at not less than \$1.25 per keg, net, to him or the goods, as the same had rested in the magazine, at Peoria. Shipments to be made to said magazines in not less than 400 keg lots." 5240

Q. In this part of this I have just read can you tell who were the interested parties who were advised that they might discontinue the present agency agreements as far as they might pertain to sales to the former customers of their agents at Peoria? A. There had been five or six companies doing business in Peoria, and before this some time—I don't recollect the date—it had been found to be troublesome, so the agencies were reduced to one or two, according to my recollection. 5241

Q. You do not recall the names of the companies? A. No.

Q. I refer you to page 1659 of P-3 and I call attention to the following extract from the report of the special committee.

"The Phoenix Powder Mfg. Company:—

"To renew its contract with the Germantown Coal & Mining Company, Germantown, Ill., at \$1.35 per keg, allowing rebate of 15c per keg, the equity of the L. & R. Company; such to be considered as *quid pro quo* for a part of the Peoria business."

Q. Now, do you know what that was? A. Not except as read by you.

Q. You were president of the Laflin & Rand Company at that time, were you not? A. Yes.

Q. The "L. & R." Company meant the Laflin & Rand? A. Yes.

Q. Can you not tell us something about what that related to? A. I presume the Laflin & Rand Company had sold customers then being handled by the Peoria Agency whose business aggregated the amount that was allotted them in this contract you speak of.

5243 Q. And this was given as a *quid pro quo* for what the Phoenix Powder Company had given up in that trade; is that right? A. I should think for what the Laflin & Rand had given up.

Q. It says this: "The Phoenix Powder Manufacturing Company may renew its contract with the Germantown Company, Germantown, Illinois, at \$1.35 per keg, allowing a rebate of 15 cents per keg, with Equity to the L. & R. Company, such to be considered a *quid pro quo* for a part of the Peoria business." You stated that was a *quid pro quo* to the L. & R. Company; is that right? A. Yes.

5244 Q. The Laflin & Rand Powder Company at that time was owned by the du Pont Powder Company, was it not? A. What was that date?

Q. This was August 6th, 1903. A. Yes.

Q. Who were the principal stockholders of the Laflin & Rand Powder Company during the time that you were president of that company? (Objection overruled.) A. The principal stockholders at the time I became president, until they sold their stock, were John L. Riker of New York, Mr. Solomon Turck, the estate of William Barclay Parsons, Schuyler L. Parsons, William Barclay Parson, Jr.; and I had a small amount of stock.

Q. John L. Riker and W. B. Parsons, H. B. Parsons and Schuyler L. Parsons at one time sold their

stock to the Delaware Securities Company, did they not? Well, I will ask you if they did not sell it October 2d, 1902? A. That is my recollection, yes.

Q. Do you remember whether they made an agreement with the Securities Company at the time when they sold their stock as a part of the consideration for turning over their stock? (Objection overruled.) A. Some of them made agreements—

Q. I am speaking of these particular men, Mr. Riker, Mr. H. B. Parsons, Mr. Schuyler L. Parsons— A. Yes, they made contracts never to enter into the powder business in competition with the purchaser.

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Q. They sold their stock to the Delaware Securities Company and agreed to keep out of the powder business for a period of 25 years, did they not? A. I don't recollect the terms, but that is my impression.

Q. The other day I asked you some questions about a man by the name of Brewster, who was in your employ at one time. I want to ask you some further questions in connection with the same matter. Do you remember a meeting of the sales board which was held along about the month of May or April of the year 1905, at which Mr. Brewster was present? A. No.

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Q. Do you know who the members of the sales board were at that time? Can you recall? A. I cannot.

Q. I will ask you whether these were the members who were present? Mr. Haskell, Mr. Patterson, Mr. John Mathews, Mr. Eugene du Pont, Mr. Dale Bumstead, Mr. Oliver and Mr. Martinus? A. I should suppose they may have been members at that time. I don't recollect the personnel of the sales department at that date.

Q. I believe you stated you had no recollection of a statement which had been prepared by Mr. Brew-

ster and submitted to the sales board under your orders about that time? A. My recollection of my testimony is that I had not recollection of any particular statement.

Q. Have you any recollection of any statement at all that was furnished by him? A. No. I presume statements must have been furnished by him. I have no recollection of any particular one.

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Q. I am asking you if you have any recollection of that, Mr. Haskell. Now, do you know whether that statement showed that the Buckeye Powder Company was getting more for its powder at that time than the du Pont Powder Company (Objection).

Q. Well, do you remember whether information was received by you then, or by that sales board, to the effect that the Buckeye Powder Company was then receiving \$1.17 for its powder as against \$1.15 which the du Pont Company was receiving in the same territory? A. Such a statement may have been received; I don't know.

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Q. Was it not at that time that you decided to issue your 95 cent rate and that you reduced your price from \$1.15 to 95 cents? A. I should say not. I don't recollect the date the first 95 cent price was authorized, although it was about that time. There was no general reduction in price to 95 cents then, or at any other time.

Q. When this price was made was it not made with the specific statement that it was made for the very purpose of getting the customers of the Buckeye Powder Company? A. Not according to my recollection.

Q. Will you swear it was not made at that time? A. I have no recollection regarding the statement or anything about it.

Q. I understand. I will ask you whether or not at that time Mr. Bumstead and Mr. Eugene du

Pont made a protest that they did not favor that cut at that time? A. I don't know anything about the price being made, but think it extremely unlikely they would do it.

Q. Did Mr. Bumstead or Mr. du Pont make any protest at that time with regard to the establishment of the 95 cent price?

A. As they were two assistant directors of sales in charge of that territory I should say if they made a protest, it would not have been made.

Q. It would not have been made. Do you say 5252 that simply upon your recollection or probabilities? A. Because I testified before I remembered nothing about this particular price.

Q. Therefore you regard it as a matter of probability, that it would not have been made? A. That is the only way I can consider it.

Q. Did you not at that time send out a telegram to all the principal branch offices in the Central Division announcing that cut price of 95 cents? A. I have no recollection of the matter. I should say not.

Q. Did you not send out telegrams at that time 5253 to Mr. Rice in charge of the office at Chicago, Mr. Coleman, the agent in charge at Cincinnati, and Mr. Vehmeyer, in charge at Chicago, who represented the L. & R. Company? A. I should say not.

Q. Did you not send to any of these people? A. I think not.

Q. Did you not receive a protest from Mr. Vehmeyer in very emphatic, and not very polite language, to know why you made such a cut at that time? A. I have no recollection of receiving such a communication.

Q. In 1895, after the Ohio Powder Company had come into the association—just previous to that time, however, powder went down in Ohio to 78

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Jonathan Haskell—Direct

cents a keg, did it not? A. My recollection is the Ohio Powder Company had been in the association since before 1890.

Q. Very well then. Powder went down in 1895 in Ohio to 78 cents, did it not? A. There was one sale made at 78 cents. That was by The King Powder Company, as I recollect it. That was one carload. I don't recollect any other customer being sold below 80.

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Q. On page 1061 of your testimony in the Government Case you are reported to have stated as follows: "Q. Did prices get very low in 1895? A. The price got as low, as near as I can recollect, as 78 cents per keg in Ohio. Q. Was there any money in the business for anybody? A. There was no profit at that price. There was a loss." Do you remember that testimony in the Government case? A. Yes.

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Q. In your judgment, then, there was a loss, would be a loss, at 78 cents, would there? A. Yes, if you charge off depreciation and a reasonable overhead charge and freight and so forth.

Q. In the winter of 1902 and 1903 there was a readjustment of prices, was there not, in the Central Division, and they were materially increased? A. I don't recall it. There may have been.

Q. Was not the price east of the Mississippi River fixed at \$1.25 and west of the Mississippi River at \$1.35 at that time? A. That is my recollection.

Q. In your opinion was that a reasonable price for black blasting powder in that district? A. That is the carload price. That is the price of a single carload. It was not the price at which large buyers purchased.

Q. Oh, it was not. I am asking you now whether that was a reasonable price for the powder at that time? A. It was a reasonable price for a single

purchaser of carloads, although it was advanced I believe because the price that it resulted in in the cases of larger customers made a lower price than was wise at that time.

Q. Did the price of \$1.25 east of the Mississippi River and the price of \$1.35 west of the Mississippi River yield any more than a reasonable amount of profit on the money invested in the business?

Mr. McCarter: I think that is an immaterial question.

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The Court: I think it is permissible.

Mr. Katzenbach: That question ought to be referred to a particular time.

The Court: It has relation to this particular time, 1902 and 1903, as I understand it.

The Witness: I understood the counsel before to refer to the beginning of the Association.

The Court: No, this was 1902 and 1903.

The Witness: May I hear the question before that? (Question repeated.) I understood counsel to ask whether the \$1.25 yielded a reasonable profit at the commencement of the 1896 agreement?

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The Court (To the witness): This relates to 1902 or 1903.

Q. Do you understand the question? A. I would like to hear it again. (Question repeated.) When?

Q. In 1902 and 1903. A. That price was only a price in single carload lots—

Mr. Abbott: Now, Mr. Haskell—

The Court: (To the witness) That is not an answer; it is not responsive.

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Jonathan Haskell—Direct

Q. You can say yes or no to that.

A. That yielded an average fair return when sold in single carload lots.

Q. Is that the way you testified in the Government case? A. I don't recollect whether I testified that way or not.

Q. I will ask you to state whether you testified in the Government case that you limited——

The Court: Ask him whether he limits it now.

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Q. Then do you limit that price to carload lots only? A. I limited it, yes, because that was not the average price.

Q. Will you say at this time whether or not the price of \$1.25 east of the Mississippi River and \$1.35 west of the Mississippi River was in your opinion a reasonable price for black blasting powder in 1902 or 1903 in those district? (Objection overruled.) A. Yes, when sold in single carload lots.

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Q. And in no other case? A. It might have been in certain cases.

Q. Tell me some other case in which it was a reasonable price. A. Where the powder had to be transported from the mills in the East to the Mississippi River.

Q. It would not be a reasonable price if sold from the Moor, Iowa, mills or Phoenix Mills? A. Not in large quantities.

Q. I read this from the Government record: "Q. What did the Association do in reference to prices? A. It advanced its prices twenty-five cents per keg, and later an additional ten cents per keg. This brought the price to how much, east of the Mississippi River? A. That brought the price, at that time, to one dollar and twenty-five cents in the States of Indiana, Ohio, and Illinois. Q. And how

much west of the Mississippi River? A. The states immediately west of the Mississippi were ten cents higher, and south of the Ohio were ten cents higher. As you got further west and further south the price advanced still more. Q. Were those prices ever increased any further? A. A readjustment of prices, which was made in the winter of 1902 or 1903, resulted in some advances, but was not a material change from what was in effect at the time the price schedule was adopted, or when the Association was first formed. Q. Were these prices of one dollar and twenty-five cents east of the Mississippi River, and one dollar and thirty-five cents west of the Mississippi River, in your opinion, reasonable prices for black powder? A. They were. Q. Did they yield any more than a reasonable amount of profit on the money invested in the business? A. They did not."

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Q. Do you remember so testifying? A. I understood that testimony to apply to the period when the prices were made.

Q. But you so testified? A. Yes.

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Q. And the statement was true as you made it at that time? A. I intended it to be. I was a matter of opinion.

Q. One question or two with regard to the contracts. As I understood you to say the other day, you did receive some suggestions from time to time from various people with reference to the form of the contract which you adopted in 1897. Is that correct? A. You refer to me personally?

Q. I mean the association of which you were a part and which I am assuming you represented in your negotiations with reference to these contracts—preparing contracts? A. My recollection is that at the time the contracts were resumed several of the members of the advisory committee were re-

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Jonathan Haskell—Cross

quested to and did bring in suggestions regarding the form of contract we employed.

Q. It was not all one form of uniform contract that was submitted at that time, was it? A. There were a number of suggestions to the—

Q. And afterwards the form of contract was sometimes changed, was it not? Some new provisions were inserted from time to time? A. Each concern made its own contract providing they put such and such provisions in, is my recollection.

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Q. And those provisions that they must put in there were sometimes changed by authority of the association, were they not? A. I don't recollect whether they were or not. They may have been.

Mr. Abbott: That is all.

Cross examination by Mr. Katzenbach:

Q. I believe you testified several days ago to the effect that you entered the high explosives business in the year 1892, did you not? A. Yes.

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Q. At that time what concerns were you connected with? A. The Rapauno Chemical Company and the Hercules Powder Company.

Q. And the Rapauno Chemical Company was a concern having its plant here in the State of New Jersey? A. Yes.

Q. At what point in the State of New Jersey? A. At Thompson's Point.

Q. Is that known as Gibbsboro? A. It is near Gibbstown.

Q. Near Gibbstown, rather. You were also president of the Hercules Powder Company? A. Yes.

Q. Where was that plant located? A. That was located in Cleveland, Ohio.

Q. What were the stockholding interests in the Rapauno Chemical Company at that time, in 1892,

when you became connected with it; who were the principal stockholders? A. The stockholders in each concern were identical in proportion, the Lafflin & Rand Powder Company, the Hazard Powder Company and E. I. du Pont de Nemours & Company, William du Pont and Henry Belin, Jr., of Scranton, who represented the estate of the late Lamot du Pont.

Q. Then Lamont du Pont had been the original investor in these companies, together with the other interests you have spoken of? A. My recollection is that Mr. Lamot du Pont acquired his interests before his death from the du Ponts and the Lafflin & Rand Companies.

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Q. Then, with the Rapauno Chemical Company, the du Pont interests and the Lafflin & Rand interests and the Hazard interests, together with the members of the du Pont family, had been connected with that company from its very inception, had they not? A. Yes.

Q. And that was practically the pioneer in the high explosives business of the east, was it not, the first to engage in the manufacture of high explosives in the eastern part of this country? A. I think that the plant of the Atlantic Dynamite Company was established first.

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Q. That was established first? A. Yes.

Q. Where was the plant of the Atlantic Dynamite Company? A. At Kenvil, New Jersey.

Q. Did the interests you have mentioned as being connected with the Rapauno and Hercules Companies have any interest in the Atlantic Dynamite Company at the inception of that enterprise? A. I think on the formation of the Atlantic Dynamite Company they took a certain proportion of the stock.

Q. And they owned that proportion of the stock

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Jonathan Haskell—Cross

at the time you became connected with the business in 1892; is not that so? A. All except that portion which was owned by Mr. Lamont du Pont. It had been sold.

Q. Then the facts were that in this enterprise the Lafin & Rand Company, the Hazard Company and the du Pont Company were practically partners, were they not? A. Yes.

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Q. You were asked on your direct examination with reference to the formation of the Eastern Dynamite Company. That company was formed in 1895, was it not? A. Yes, sir.

Q. And that company took over this Rapauno Chemical Company and the Hercules Powder Company and the Atlantic Dynamite Company; that was your testimony, was it not? A. Took over the plant of the Atlantic Dynamite Company?

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Q. Yes. Took over the plant of the Atlantic Dynamite Company. Now, will you give fully the reasons why that Eastern Dynamite Company was formed and the Atlantic Dynamite Company's plant was taken over by the Rapauno and Hercules Powder Company interests in this Eastern Dynamite Company? A. The Atlantic Dynamite Company, a California corporation, had as its practical managers in the east Mr. George S. Moore and John C. Schrader, the former acting as general agent. He attended to the New York office business particularly, and more largely to the sales department of the business. Mr. Schrader, who was also a general agent, attended to the management of the works primarily, and at times also was called upon to attend the matters of detail pertaining to sales. He was the field man both for manufacture and selling. These two gentlemen were of equal importance and had gotten into a position where they could not agree with each other. They differed as to matters

of policy. Each was writing to the home office in California finding fault with the way in which the other conducted the business of the company, and an almost impossible condition had been created. The board of directors of the Atlantic Dynamite Company was situated in California. The only representative of the eastern interests on that board was Mr. Bernard Peyton, superintendent of the Santa Cruz works, of the California Powder Works, which, however, had no connection with the Atlantic Dynamite Company. Finding that it was impossible to reconcile the differences between these two managers and being so far from the scene of action of the business of the Atlantic Dynamite Company, the directors finally determined it would be best to turn over the management of the business to the eastern stockholders of the Atlantic Dynamite Company, who were also owners of the Rapano Chemical Company and the Hercules Powder Company. (After interrupting.)

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A. I knew this ill-feeling existed between these two men. I knew personally that the directors on the West Coast were disquieted as to conditions that were in the Atlantic Dynamite Company. I know that because Mr. Bernard Peyton came to me after having been to Mr. Eugene du Pont, and I know that they wanted to turn it over to the du Ponts.

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Mr. Abbott: That is apparently hearsay.

The Court: No——

Q. They wanted to turn it over. Go on. A. The only practical way to conserve the interests of all the interested stockholders seemed to be to form one concern in which all should own in proportion so as to carry on the business of the three companies, and for that purpose the Eastern Dynamite Company was formed, \$1,400,000 of its stock being

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Jonathan Haskell—Cross

given to the former stockholders of the Rapauno Chemical Company and the Hercules Powder Company. \$600,000 of the stock was given to the Atlantic Dynamite Company of California in exchange for all of its assets excepting \$5,000, which was reserved by them to wind up the company as long as its only assets should be the stock in the Eastern Dynamite Company.

Q. The Atlantic Dynamite Company, you have said, was a California corporation? A. Yes.

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Q. Were the stockholders of the Atlantic Dynamite Company in any way connected with the California Powder Works, the California stockholders? A. I think not; but they were all small stockholders. They may have had some stock in it. But I know no such cases.

Q. The interests owning the California Powder Works were not the same as those owning the Atlantic Dynamite Company? A. That is correct.

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Q. Then in the acquisition of this Atlantic Dynamite Company, it was acquired by overtures made from the stockholders of the Atlantic Dynamite Company themselves rather than by any initiative taken by you in behalf of the Rapauno Company or Hercules Company or any of the stockholders of the Rapauno or Hercules Companies, was it not?

A. The overtures were made by Mr. Bernard Peyton as representing the directors of the Atlantic Dynamite Company of California.

Q. So that the overtures came from the Atlantic Dynamite Company's board of directors itself? A. Yes, sir.

Q. Now, then, there has been some reference to a company that was acquired by the Eastern Dynamite Company known as the Brooklyn Glycerine Company or the Brooklyn Glycerine and Refining Company. Have you any recollection of the assets of that company being purchased or the plant of

that company being purchased by the Eastern Dynamite Company? A. Yes.

Q. Will you state whether or not glycerine is a product that is required for use in the manufacture of dynamite? A. It has always formed one of the most important ingredients in the manufacture of dynamite.

Q. And from what is glycerine itself made? A. From the waste soap lyes or from candle crude, the crude fats that come from the making of candles.

Q. There has always been somewhat of a scarcity of glycerine, has there not? A. For the last twenty years the demand has practically absorbed all that could be made.

Q. What was the business of this Brooklyn Glycerine and Refining Company? A. It was a small plant organized to take over a plant for the refining of glycerine in Brooklyn, New York.

Q. Then the purpose of the Brooklyn Glycerine and Refining Company was for the production of glycerine and not for the production of dynamite? A. Yes.

Q. And that was merely purchased by the Eastern Dynamite Company in order to have better facilities for the making of glycerine which it used in its dynamite manufacture, was it not? A. Yes.

Q. And it had no dynamite trade or anything of that nature? A. No.

Q. You stated on your direct examination that when you became president of the Rapauno Chemical Company and the Hercules Powder Company you thereby came in contact with the conditions existing with reference to the trade of gunpowder or blasting powder. Is that so? A. Yes.

Q. In that connection you said that you knew the prices that prevailed for black blasting powder between the years 1892 and 1895, and prior to your

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Jonathan Haskell—Cross

connection with the Laffin and Rand Powder Company, by reason of the fact that in the sale of the higher explosives of the companies with which you were connected, you sometimes had to furnish under these contracts for higher explosives, black blasting powder. Is that so? A. Yes.

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Q. In that way did you become acquainted with the prices that prevailed for black blasting powder between the years 1892 and 1893? A. Only to the extent that they were sold by my company in connection with dynamite.

Q. As a matter of fact you knew that black blasting powder companies made contracts for black blasting powder at that time, did you not? A. Yes. They made a contract with the Rapauno Chemical Company for the drainage canal.

Q. And you referred to one contract which extended over a period of years, which was a contract for the furnishing of explosives for the building of the Chicago Drainage Canal, did you not? A. Yes.

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Q. Did you make such a contract with any black blasting powder company that was a member of the association at that time for such supplies of black blasting powder as you would need to comply with your contract for the Rapauno Chemical Company in the furnishing of explosives for this work? A. Yes.

Q. So that as a matter of fact the black blasting powder companies did make contracts for black blasting powder as early as the years 1892, 1893 and 1894, to your knowledge? A. Yes.

Q. Will you state what the reasons were, if you know, why customers desired to make contracts for black blasting powder during this period? A. During this period?

Q. Yes; from 1892 to 1895, from the standpoint

of the customers of black blasting powder,, the consumer of black blasting powder; why did they desire to make contracts? A. It was customary on the part of contractors when figuring on a contract to be made to take into consideration the cost of the supplies and then, as now, they usually made a contract for the supply of the high explosives, the black blasting powder or any other kind of explosives they might require during the continuance of the work, in order that any change in the markets might not affect the price that they had counted upon in making their contract for the work.

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Q. You were familiar in a general way with the price of black blasting powder prevailing between 1892 and 1895 and prior to your connection with the Laflin and Rand Company, were you not? A. I knew from heresay that it was going down steadily.

Q. What was the date you became president of the Laflin and Rand Company? A. In February, 1895.

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Q. When you became president of the company did you familiarize yourself with the conditions prevailing in the black blasting powder business at that time? A. Yes.

Q. There has been an association referred to as existing in more or less form during the years 1892 to 1896. Did you become familiar with the existence of an association of black blasting powder manufacturers? A. Yes.

Q. What condition did you find in the black blasting powder business? Describe it fully, if you please, as it existed in the year 1895 with reference to the price of black blasting powder. What condition did you find with reference to the prices of black blasting powder which you discov-

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Jonathan Haskell—Cross

ered after you became president of the Laffin & Rand Powder Company in 1895? A. The whole market was thoroughly demoralized.

Q. By demoralization of a market what, exactly, do you mean? A. The price had gone down from where I first became cognizant of it, \$1.50 a keg, in 1892, to as low as 80 cents or 85 cents a keg, in the Middle West.

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Q. You have mentioned one instance you knew of 78 cents a keg? A. That was afterwards.

Q. Yes, that was afterwards, was it; and at the time you assumed the presidency of the Laffin & Rand Powder Company, or shortly afterwards, powder was selling at 80 cents to 85 cents a keg? A. Yes.

Q. And that was a condition that was prevailing, you said, in the Middle West? A. That was in the central district, as far west as the Mississippi River, and north of the Ohio River.

Q. And the central district comprises what territory? The states of Illinois, Ohio and Indiana.

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Q. State what factors had produced this low price of powder? Was it due to competitors entering business? A. Yes; the productive capacity far exceeded the business to be done.

Q. Well, was there competition between the companies that composed this association at that time, between them for trade? A. There always had been competition between them, but just as soon as each of the so-called associated companies received instructions to protect its own trade the prices fell of themselves, and they fought each other, if anything, harder than they fought the outsiders.

Q. So that during this period of 1892 to 1896 you had a condition in which the companies that formed this association were competing very hard

among themselves for trade, were they not? A. Undoubtedly.

Q. And you also had those companies competing with other companies which were not members of the Association for trade, did you not? A. Yes.

Q. What companies were there that were actively competing for trade that were not connected with the association between the years 1892 and 1896?

A. There was the Equitable Powder Company, the Phoenix Powder Company, the Chattanooga Powder Company, the Globe Powder Company and the Belmont Powder Works, owned by John D. Griswold.

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Q. In the Middle West what companies that were outside of the association were very actively competing in this district that you have referred to as the Central District, with the companies in the association? A. Both the Phoenix and the Equitable had plants in southwestern Illinois. Their competition was very keen. The King Company almost immediately after I went into the black powder business withdrew from the association entirely and became an outside competitor, not making any report or having any connection with the old line companies. Those three concerns were the largest factors of outside competition.

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Q. During this period the Laflin and Rand Company merely met the reduced prices of black blasting powder, did they not? A. As far as I can recollect.

Q. To your knowledge was there any effort upon the part of the old line companies to cut the prices that were made by the Phoenix, the Chattanooga, the Equitable, the Belmont or the Globe Companies during this period? A. I cannot speak as to what the policy was of the other companies. I only know what my instructions were to my own men and what the results were in my companies.

Q. What were those instructions and what were the results? A. My instructions were that the trade was to be striven for and gotten at equal prices, because if we took the trade at cut prices we would simply hold it until someone else made a greater cut.

Q. So your instructions were merely to meet the prices of others competing for that trade? A. In most instances; yes.

5297 Q. As a result of this demoralization of prices in the period which you have just referred to, between the years 1892 and 1896, what happened in the year 1896 in reference to getting together all the former associates and of the introduction of any new associates into an association? A. A meeting was held of all the various powder companies that joined the 1896 agreement, and an allotment of a number of kegs, which simply indicated the percentage that each concern was to have in the adjustment for over-sales and undersales, was agreed upon under a committee, a governing committee called the advisory committee, which was formed for the purpose of representing the associates between general meetings.

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Q. The real purpose of this association was, was it not, to prevent any of the weak companies from going under by reason of the lowering price of powder, and an effort upon the part of the older companies to strengthen the weaker companies by bringing them together into an association? (Objection overruled.) A. I should think that was the result rather than the purpose.

Q. Is not the result of any association of that kind to aid the weaker companies that enter into it? A. I would hardly say that we were as philanthropic as your question would indicate. We wanted to continue to do business at a fair degree of profit.

Q. Yes. The purpose of the association then was to enable those who engaged in business to do business at a fair degree of profit, was it not? A. Undoubtedly.

Q. And the result of it was to aid the weaker companies, was it not? A. Unquestionably.

Q. Because if the prices kept lowering and the demoralization and the demoralized market continued, it would mean that some weaker companies would have to go out of business, would it not? A. There is no question about that.

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Q. After the agreement of 1896 was formed, I understand that the prices were raised as the result of the formation of that agreement. That is your testimony, is it not? A. Yes.

Q. Just as soon as one of these associations was formed, or revived and the price of black blasting powder was increased, so that there was a fair degree of profit in the sale of it, did not that always bring into the field new or other new companies that desired to avail themselves of these increased prices of black blasting powder? A. That was my understanding.

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Q. Has not that occurred in every single instance that you can recall, where the parties have gotten together—that as soon as they have gotten together other parties have come out and engaged in the business, with the result that the same process to some extent, more or less, of a lowering of price, has prevailed? A. I was personally cognizant with what happened in regard to the 1896 agreement, and also looked up the result of the 1889 agreement, where the prices were advanced, and found that soon after the agreement was made, then or about then, it brought in a very large or a very much larger measure of new competitors.

Q. During the period between 1892 and 1896 do

5302

Jonathan Haskell—Cross

you know of any concerted effort that was ever made by these associates or in this association against any one of those companies, as, for instance, the Equitable, Phoenix or Chattanooga, that was outside of the association? A. I do not.

Q. After the formation of the 1896 association, shortly after that, did any new concerns come into the powder business that you know of? A. Almost immediately the Indiana Powder Company was formed.

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Q. And the Indiana Powder Company was formed by the activities of a Mr. Rood? A. Yes.

Q. (Continuing) Who had been an associate with Mr. Waddell in the Cincinnati office of the Hazard and du Pont Companies? A. Yes.

Q. And that Mr. Rood, who was associated with Mr. Waddell, is the same Mr. Rood that formed this Indiana Powder Company or was instrumental in forming it? A. Yes.

Q. And what year was the Indiana Powder Company formed? A. It was in 1896, I think, because they started operations in 1897.

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Q. Do you recall that they did start operations in the year 1897? A. Yes.

Q. Where were the works of the Indiana Powder Company located? A. At Fontanet, Indiana.

Q. Will you state in what part of the State of Indiana Fontanet is located? A. In the central portion, a little north of the actual center, I think.

Q. In the territory at that time what black blasting powder companies were actively engaged in the business, with plants located near the plant of the Indiana Powder Company? A. There was no plant at that time that was built in Indiana. The powder had to be brought from the East or from plants on the Mississippi River.

Q. What were the nearest plants to the Indiana Powder Company in the year 1897? A. The Pleasant Prairie plant of the Laffin & Rand Powder Company, the Mooar plant of the du Pont Powder Company, the Belleville plant, of the Phoenix; and also the East Alton plant of the Equitable. They were very near equi-distant from the Indiana powder concern.

Q. What about the Youngstown plant of the Ohio? A. I don't know whether I could say that was nearer or further away, but that was one of the competing plants in that territory. 5306

Q. One of the competing plants? A. Yes.

Q. So that this Indiana Powder Company was located by its promoters in a territory where there was a considerable supply of black blasting powder coming from these other companies you have named? A. It was located in a field we should have occupied and intended to occupy.

Q. The agreement of 1896 that has been referred to here continued on down to what date? A. June 30, 1904.

Q. Was it possible after a company had become a member of the association for it to withdraw at any time it desired? A. Yes. 5307

Q. And in the history of the associations that had been done frequently by different companies, had it not? A. The only other case I know of was the withdrawal of the King Company in 1895.

Q. Do you know whether any of the companies prior to June 30, 1904, withdrew from the 1896 association? A. The King Powder Company at the time it made a contract for the sale of its goods ceased to be a member of the association.

Q. Did not the Equitable Powder Company withdraw prior to June 30, 1904? A. My recollection is that it served notice June 30, 1903, of its intention to withdraw a year from that time.

5308

Jonathan Haskell—Cross

Q. So it did take effect June 30, 1904, and the association then dissolved as of that date, did it?

A. Yes.

Q. After the dissolution of the association in 1904 to your knowledge has there been any body or any association which is a perpetuation of the association of 1896, which was dissolved on June 30, 1904? A. Absolutely not——

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Mr. Abbott: That is a legal conclusion.

The Court: Yes; it involves a legal conclusion. If you can do so, separate your question so as to deal only with facts. You should do that.

Q. What companies formed the association prior to June 30, 1904? A. The du Pont, Lafin & Rand, Hazard Company, Chattanooga, Phoenix, Ohio, Oriental and Birmingham. There may have been others, but I don't recollect them at the moment.

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Q. The King? A. The King had withdrawn prior to that date. I understood the question to be just before the dissolution.

The Court: The question was who were the associates in 1896.

Q. Yes, up to June 30, 1904; but the witness said the King had withdrawn prior to that time? A. Prior to the termination of the association——

Q. Prior to the termination of the association. And the termination of the association was at the same time as the date fixed for the withdrawal of the Equitable? A. Yes.

Q. After June 30, 1904, you have spoken of an agreement called the Sullivan agreement. Did that agreement have anything to do with the associa-

tion as it had existed prior to that time? A. Nothing whatever.

Q. Did this agreement which you have called the Sullivan agreement attempt in any way to fix prices? A. In no way whatever.

Q. I understand that agreement was an agreement between a man by the name of Sullivan on the one hand and the du Pont Company on the other, of the companies known as the Fay Companies, the Aetna Powder Company, the Miami and the American, to fix the quota of trade between the two companies. Was not that so? A. Correct.

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Q. At that time you were an officer of the du Pont Company? A. Yes.

Q. And you were active in the affairs of the du Pont Company? A. Yes; head of the sales department.

Q. Was there any consolidation whatever between these interests called the Fay interests and Sullivan and the du Pont Company as to the fixing of any prices to be charged for the products of either the du Pont Company or the Fay Companies? A. Not that I can recollect.

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Q. The purpose of the association, or one of the objects of the association, was I think to endeavor to fix prices, was it not? A. Yes.

Q. They had not been particularly successful in it, had they? A. They had failed very often.

Q. There was not anything in the Sullivan agreement with reference to prices, was there? A. Nothing whatever, as near as I can recollect.

Q. In the agreement of 1896 was there any provision which limited production? (Objection overruled) A. Nothing whatever.

Q. Now, then, this agreement of 1896 did not fix any allotment by kegs of blasting powder to different companies, did it? A. The proportions were indicated by kegs; but that was merely that

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Jonathan Haskell—Cross

the allotment to each concern might indicate that percentage which that allotment bore to the total number of kegs of all the allotments.

Q. So really the percentage was the allotment and not the number of kegs? A. Yes.

Q. Mr. Haskell, you testified with reference to an agreement for the sale of the product of the King Powder Company, I believe, did you not? A. Yes.

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Q. And that agreement was terminated at what period of time? A. About the end of 1906.

Q. And that was an agreement between what parties?

Mr. Abbott: The agreement is in evidence—a written agreement.

A. The agreement was made, as I recollect it, between the King Powder Company on the one hand and the du Pont and Laflin and Rand Companies on the other hand.

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Q. This agreement, generally speaking then, was for the sale of the powder of the King Powder Company to the du Pont-Laflin & Rand interests? A. Yes.

Q. And that agreement had been made some years prior to 1906, had it? A. Yes.

Q. And those sales had been conducted by the Laflin and Rand and the du Pont Companies? A. Through the King Mercantile Company.

Q. Through the King Mercantile Company and then, as I understand, you had been advised by your counsel that there was some question of the legality of that agreement? A. That is correct.

Q. And I suppose by that time the King Powder Company had some legal advisers, too? A. Yes; and they took the opposite view.

Q. That is, your advisers said that there was

some question as to the legality of this contract, and the advisers of the King Powder Company said that the contract was a perfectly legal contract. That was the question, was it? A. That was the position that they took.

Q. Now, then, after the King Powder Company ascertained your desire to cancel this agreement, were they willing to rescind this agreement without the payment of a consideration? A. They declined to cancel it under any circumstances.

Q. Did you afterwards find any consideration that did move them to a cancellation of that contract? A. We were forced to tell them—served notice upon them that if they did not agree to a cancellation upon some terms, that we would break it. 5318

Q. If you could; is that it? A. We felt we could cease to sell their powder—

Q. Well, you were relying upon your counsel and they were relying upon theirs? A. Yes.

Q. So then it would result in the issues as to which counsel knew the most law; is that the idea? A. That was it. 5319

Q. So then what amount, if any, was finally paid by your company for the purpose of the cancellation of this agreement? A. I have refreshed my memory since I was on the stand before and I have found that the consideration was \$100,000.

Q. And that was paid to the King Powder Company in order to be released from this agreement that your counsel had advised you that there was some question as to the legality of; is that right? A. Yes.

Q. For that purpose you paid out \$100,000? A. Yes.

Q. That was the year 1906? A. Yes.

Q. State whether or not there was any founda-

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Jonathan Haskell—Cross

tion for the payment of this consideration from the attitude or standpoint of the King Powder Company, what it was to compensate them for? A. This contract had been made some years previous, and at the time the King turned over the sale of its goods to us they discontinued all their storage facilities and selling agents that they had to maintain, and when it came to the breaking off of the agreement they naturally objected, because having deprived themselves, on account of the contract, of all the ordinary facilities for carrying on business required by a company selling sporting and blasting powders, it would cost them a considerable sum of money to replace the facilities to put themselves back in the business; so that we very reluctantly consented to pay them \$100,000 as a fair consideration to restore them to be active participants in the powder business.

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Q. Then in 1906 you paid the King Powder Company \$100,000 in order to restore them to become a competitor in the business, did you? A. That is correct.

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Q. You said the Indiana Powder Company commenced business in the year 1897, was it? A. Yes.

Q. How long was it after the Indiana Powder Company had been engaged in business that there were any negotiations made for a purchase or a sale of this property of the Indiana Powder Company? A. I do not recollect the exact date, but I think it was about three years.

Q. Who made the overtures in these negotiations? A. The first two overtures to purchase their plant or their company were made by Mr. Sternberger, one of the largest stockholders in the Indiana Powder Company. The last one I am not clear in regard to, whether he was the mover in it, or Mr. Tally, another stockholder and president of a company.

Q. Mr. Tally was president of the company? A. Yes.

Q. What office did Mr. Rood hold in the company? A. He was secretary and treasurer, according to my recollection.

Q. Were you ever approached by Mr. Rood or Mr. Tally together with a view of buying the Indiana Powder Company? A. I think Mr. Rood only came into the consultation after Mr. Tally had paved the way. Mr. Tally was from Delaware, from the Brandywine Hundred, and I think he opened the negotiations with Mr. Eugene du Pont. 5324

Q. During the period the Indiana Powder Company was in the business did the members of the association to your knowledge ever take any action to drive the Indiana Powder Company out of business? A. No.

Q. When the Indiana Powder Company became engaged in business did they sell powder to various customers that had formerly been the customers of the Laflin & Rand Company? A. They started out with large contracts, with their five year contracts, according to my recollection. 5325

Q. Those stockholders prior to that had been customers of what companies, to your knowledge? A. Of several of the older powder companies, the Hazard Company particularly—the Hazard and du Pont Companies.

Q. Had they been customers of the Laflin & Rand Company? A. Yes; there were one or two of them who were customers of the Laflin & Rand. Our interest in their trade was not as large as some of the others.

Q. During this period did the Laflin & Rand Company, with which you were connected, ever seek to make a lower price for powder from that which you knew that the Indiana Company had offered? A. Not as far as I know.

Q. Did you ever cut prices as against the Indiana Powder Company? A. We never cut prices to the Indiana Powder Company's customers, as far as I am aware.

Q. As a result of these negotiations that were had with reference to the plant of the Indiana Powder Company, what happened with the ownership of that plant? A. We bought the stock of the company.

5327 Q. You bought the stock of the company? A. The du Pont, the Hazard and the Laflin & Rand, and all of the other associated powder companies excepting the King, is my recollection. I——

Q. What year was that? A. I don't recall the exact year. It was 1900 or 1901 or somewhere thereabouts.

Q. Was it not in the early part of the year 1902 that the Indiana was purchased? A. I am under the impression that it was the last of 1901 and that the transaction was actually carried out early in 1902.

5328 Q. After the purchase of the Indiana Powder Company was made did you become an officer of that company? A. I don't recollect, but I think I was made its president.

Q. Did that company continue to engage in business and its factory operate down to the year 1907? A. Yes.

Q. What caused the interruption of its business in 1907? A. An explosion destroyed practically the entire plant in 1907.

Q. Mr. Haskell, you were examined with reference to an agreement that has been referred to as the foreign agreement. You recall that, do you not? A. Yes, sir.

Q. During the course of your examination you were handed a printed document and you were asked to refresh your memory from that printed

document. You recall that, do you not? A. Yes.

Q. I think that during your testimony you stated that you could recall as a part of the agreement something to the effect that was not referred to in the printed sheets that you were asked to refer to to refresh your memory; is not that so? A. Yes.

Q. Then, as a matter of fact the printed sheets you had produced before you did not contain something that you remembered to be contained in the original agreement; is not that so? A. It contained something that I knew the original agreement must have contained and was not there. 5330

Q. So that the printed sheets you had before you could not have been, then, a copy of that printed agreement in its entirety, could it? A. It could not have been a complete copy; no.

Q. You said that this foreign agreement, or one of the stipulations, was that this European concern, the Rottweil-Koln Veringte-Pulverfabricken Co. of Cologne—you recall that company, I think you said? A. Yes.

Q. Was not to build any plants in the United States; is that correct? A. Correct. 5331

Q. In your opinion, would a plant or plants built in the United States, for instance in the vicinity of Peoria, have been an aid to the Buckeye Powder Company if they had been built by this foreign concern? A. They would have added further competition where more than enough already existed.

Q. Do you recall the year in which the Buckeye Powder Company began business? A. The fall of 1903.

Q. Do you know the locality in which its plant was erected? A. I have never been there, but I believe it was erected near Peoria, Illinois.

Q. What other companies were there in the years 1903, other than the plants of the du Pont Powder Company, built in this territory comprising the

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Jonathan Haskell—Cross

States of Indiana, Ohio, Illinois, Missouri, Iowa and Wisconsin? (Objection overruled.) A. I don't recollect. Comparatively soon after the Buckeye Powder Company commenced business the Senior Powder Company built a plant in southeastern Ohio; the Egyptian Powder Company built a plant in southern Illinois; the United States Powder Company built a plant near Terre Haute, Indiana; and there was another plant built near Kansas City called the Eureka or Excelsior.

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Q. Then along with the Buckeye Powder Company and the establishment of that plant there came into that very field the new companies in the form of the United States, the Egyptian, the Excelsior and the Senior. Is that correct? A. Yes.

Q. Did any of the older plants at that time, or near that time, erect any new mills to your knowledge; for instance, did the Miami Powder Company— A. Yes; the Miami erected a plant near Thebes, Illinois.

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Q. What part of Illinois is that? A. In the extreme southern part. And several of the older companies increased their capacity because their business from the West had grown very much larger and it was necessary to either build or increase their Western plants so as to avoid the very considerable freight rates from the East to the West.

Q. Those plants that you refer to were in Kansas, in Iowa, and in— A. The Mooar plant was increased, the Pleasant Prairie was increased, the Indiana plant was largely increased, and the Kansas plants were increased. A plant was built in Oklahoma Territory, and the Equitable built a new plant at Fort Smith, Arkansas.

Q. Those were all engaged in business between the years 1903 and 1908 except that the plant of the Indiana Powder Company and Fontanet was

destroyed by an explosion in 1907? A. That is my understanding.

Q. You have spoken of contracts. Do you know whether the associated companies made contracts prior to the year 1897 with customers for powder?

A. I understand that they did; and I know of some of them that were made by those companies that I was connected with prior to my going to Laflin & Rand. In other words, we made some contracts.

Q. So powder companies had made contracts for a period of considerable time prior to 1897? A. 5336
Unquestionably.

Q. And those contracts were reported in the making of them to the association, were they not?

A. In many instances, yes.

Q. You have a recollection of that, have you not?

A. I have a recollection of reports being called for of contracts existing at certain times.

Q. I am speaking of the time prior to June, 1897.

A. Yes.

Q. You spoke the other day of a resumption of contracts in the year 1897. There had been a period of time when contracts prior to June 10, 1897, had not been freely made; is not that so? A. Yes. 5337

Q. I think you gave the reasons at the time why there had been a hiatus in the making of contracts between different members of the association, and customers, did you not? A. Yes.

Q. That was at some time during the year 1896, in the early part of it, and prior to the Presidential Election in the year 1896 the Powder Companies were fearful that powder contracts being made according to the value of the dollar in the United States, if Mr. Bryan was successful in his Presidential canvass and silver was coined at a ratio of 16 to 1, I believe it was, that the value of the dollar in which the Powder Companies would be paid for powder furnished under their contracts

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Jonathan Haskell—Cross

would be lessened? Is not that so? A. That is correct.

Q. As a matter of fact, the chief ingredient of black blasting powder is nitrate of soda, is it not? A. It is.

Q. And that comes largely from Chile and is imported into this country, is it not? A. Entirely.

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Q. Entirely so. There is no other place in the world, then, from which you can get nitrate of soda other than that country, Chile? A. That is correct.

Q. In what form did the powder companies engaged in the manufacture of black blasting powder in the year 1896 have to pay for the nitrate of soda which they got from Chile? A. In gold.

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Q. The reason, then, of the hiatus in the making of contracts between the members of the association was due solely to this agitation in reference to the silver, and that you had to pay for the chief ingredient of powder, nitrate of soda, in gold? A. Yes. And under the advice of some of the members of the committee, that it was best not to make contracts for a long period of time——

Q. And that was due to what? A. They had an idea that it was to their interests not to make contracts. I didn't agree with them in it at all.

Q. This matter of silver and gold was the principal reason, as I understand it— A. That formed a comparatively impassable bar at the moment. We did not see how we could get around that question and make contracts payable in the currency of the United States and protect ourselves on raw material advances.

Q. You recall this resolution being shown to you by Mr. Abbott, in some of the minutes of the association in the month of June, 1897, do you not? (indicating) A. I recall a paper being shown to me, among others——

Q. Among others, yes, which had some reference to this matter of the associates making contracts?

A. I gathered that as I glanced over it.

Q. Yes. The matter of making contracts had existed, as I understand it, long anterior to this among the associates, had it not? A. Yes.

Q. And those contracts were reported to the associates just as any contract, following this meeting in 1897, were reported? A. I don't think they were reported in exactly the same way, because when each company could make any price it chose it did not report contracts unless the advisory committee asked for a list of contracts.

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Q. They did so call, did they not? A. They did at the time prices advanced.

Q. Do you recall or not, Mr. Haskell, whether there was any definite action taken at a meeting of the board of the association on or about the 8th of July, 1896, with reference to the stopping of the making of contracts? A. My recollection is that the resolution stopping the making of contracts was adopted about that time.

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Q. I show you a document which I believe has been admitted in evidence and marked 117-G (page 1026 of record) and ask you whether that refreshes your recollection as to the action that was taken at that time? A. (After examination): I recall such a resolution being passed.

Q. I will read that section, as this document has been offered in evidence. It is a report of the meeting held on the 8th of July, 1896:

"On motion of Mr. Fay, seconded by Mr. Haskell, that no orders shall be accepted for future delivery of blasting powder except for specifically stated quantities and at specified dates of shipment; that no agreement shall be made for any delivery after December 31, 1896, that all orders not filled at that date be cancelled and customers notified of such

5344

Jonathan Haskell—Cross

intended cancellation in every instance. The secretary shall advise all of the concerns now associated of this resolution. Carried."

A. My recollection is that that was passed.

Q. Do you recall whether or not on July 8, 1896, the nominees of the various political parties had been nominated for president? A. I do not recall the date, no.

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Q. Do you recall whether or not there was any action taken by the board on the 22nd of July, 1896, with reference to the restriction of contracts? I show you Exhibit 117-F, page 1023? A. (After examination): I recollect the action as being taken.

Q. I read at the page indicated:

"On motion of Mr. Haskell, seconded by Mr. Colvin, it was:

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"Resolved, that as the impression seems to prevail that the restriction of contracts for blasting powder to December 31st, 1896, is because of the possibility of further and material modification in price, it is deemed advisable to request the parties here represented to instruct their salesmen and employes that the action is taken not because there is any present intention of further changing prices, but because it would seem unwise to obligate ourselves to deliver powder at present prices in view of the peculiar condition of financial affairs in the country, and more particularly because nearly all the material used in our manufacture is imported and must be paid for in gold, regardless of the monetary standard of this country."

That is what you had reference to in your testimony, is it not? A. Yes.

Q. The portion which I have just read? A. Yes.

Q. Mr. Haskell, you stated that you had, I believe, when you were president of the Eastern Dynamite Company, established a system known as the

trade report system, did you not? A. It was established before the organization of the Eastern Dynamite Association.

Q. When you were president? A. When I was president of the Rapauno Chemical Company and the Hercules Powder Company.

Q. That system was introduced into the Laflin and Rand Company when you became president of that company? A. Yes, that is correct.

Q. And subsequently it was introduced into the du Pont Company, was it not? A. Yes.

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Q. And is now used and has been for a number of years past by the du Pont Powder Company? A. Yes.

Q. That system is merely a system by which the general conditions of trade in the country are reported to the principal office, together with information secured from customers, is it not? A. It is done for that purpose and for the purpose of checking the salesman in the field.

Q. Well, then, it has the purpose of eliciting information from customers with reference to whether they are in the market for goods, and of whom they buy, and at what price they buy? Is that it? A. It was originated for the purpose of knowing from the salesmen's reports what they were doing each day, and in connection with each customer visited.

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Q. And another purpose of the system of trade reports was to see the activity or inactivity of your own salesmen? A. Yes.

Q. And from time to time the correctness of the information reported by your salesmen, through trade reports, would be checked up to find out whether it was accurate or not? So far as we could, but it would be very difficult.

Q. Did any of the salesmen of the Laflin & Rand

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Jonathan Haskell—Cross

Powder Company, while you were connected with that company or the du Pont Company, have any instructions to report on these trade reports gossip and rumor? A. No, unless they believed it to be true.

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Q. Now then, what they were asked to secure and what they did secure was information as to whether the user of explosives or of black blasting powder was in the market, was it not, for the purchase of goods? A. The prime information desired was to know whether he was then in the market, or if not, the day at which he would be in the market.

Q. So he could be called upon again about that date? A. Yes.

Q. And then if your salesman found out by conversation with a customer of whom he was purchasing his explosive supplies—he would find that out? A. He would endeavor to do so.

Q. And also endeavor to discover the price that he was paying, by asking the customer? A. Yes.

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Q. These trade reports would be sent in then to the office of the company, would they not? A. Yes.

Q. And they would furnish guides as to the action of the company with reference to prices or with reference to when it was necessary to send out other salesmen to interview this trade? A. They would be used for the information of the sales directors or assistant directors in governing the affairs of the sales department.

Q. In the year 1903 you have testified that there was a board of the du Pont Powder Company known as the sales board, have you not? A. Yes.

Q. Did that board have any members of any other company than the du Pont Company sitting with the board and acting on these matters? A. It was made up entirely of the members of E. I. du

Pont de Nemours & Company at that time and its owned or controlled companies.

Q. Now, then, Mr. Haskell, that was an organization that was entirely within the du Pont Company itself? A. Yes.

Q. And made up solely of its employees? A. Yes.

Q. What connection did you have with that sales board during the years 1903 and 1904? A. I created it, presided at its meetings when I was present.

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Q. And how long did you have connection with that board? A. Until 1907.

Q. Was it one of the duties of that board to consider the conditions of the trade in various parts of the country? A. Yes.

Q. And did you at meetings of that board endeavor to fix a price to meet the conditions of the trade? A. That was the reason for which it was constituted.

Q. There has been reference made here upon your examination to what is termed a general 95 cent price per keg for powder in the year 1905, made in the early part of 1905 as alleged. You were the head of the sales board at that time, were you not? A. Yes.

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Q. Was there any action of the sales board during that time, during the year 1905, which made a general price of 95 cents to all users or consumers of powder in the district comprising the State of Illinois and the surrounding States, known as the Central District? A. No.

Q. You recall what did occur, do you not, in reference to the making of a 95 cent price? A. I recall that we reluctantly authorized the branch office in specific instances to go to the 95 cent price where it was rendered necessary by the offering of other companies.

5356

Jonathan Haskell—Cross

Q. And that was simply in specific instances and those instances were discussed before that board before the board took any action on them, were they not? A. That is my recollection.

Q. And you acted upon information which you believed to be correct at the time that any 95 cent price was made to any customer? A. Every branch office manager was required to show most excellent reasons why it was necessary to make such a price to meet the price of others.

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Q. Was there any general price at any time between 1903 and 1908 made by the du Pont Company at 95 cents in this district? A. No.

Q. And in each case the matter was acted upon specifically and distinctly from every other case, was it not? A. That is my recollection.

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Q. During that period did the sales board ever make a price of 95 cents or any other price that would be lower than the price which they were informed the customer to whom that price was being made by the du Pont Company had been offered powder by other concerns? (Objection overruled.)

A. My recollection is that no prices were made unless information was previously obtained that such a price was likely to be made or had already been made to the customer or if, as in some instances, branch offices were advised that a 95 cent price could be made, they were required to show that they had not made it unnecessarily or excepting in cases where others were making it.

Q. Then the du Pont Company never did anything except to meet a price; they never cut a price, that is knowingly? A. That was our invariable practice.

Q. Did you ever have any knowledge of a price being cut? A. I have no recollection of any such case.

Q. A 95 cent price made to any customer was arrived at in no different way than if that customer had been quoted \$1.14 or \$1.15 at a prior period or a subsequent period, was it? A. That is correct.

Q. You have been interrogated about a speech made by Mr. A. J. Moxham along in the latter part of the year 1902. I think you said that Mr. Moxham was in the habit of making speeches at the meetings of the association during that period? A. Counsel for the plaintiff asked a question which made it necessary for me to answer in that way; but as a matter of fact Mr. Moxham was always an active participant in all the meetings at which he was present and usually spoke more or less at length regarding anything he was interested in.

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Q. Have you had definitely fixed in your mind the incident which counsel for the plaintiff had in his mind when he asked you with reference to this address of Mr. Moxham? A. Yes.

Q. Now, then, that address which the counsel for the plaintiff had in mind was an address made by Mr. Moxham before the association in the latter part of the year 1902, was it not? A. Yes.

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Q. That was information that had been gathered for him by Mr. Waddell for the purpose of making his address? A. I so understood, yes.

Q. It was shortly after the speech that Mr. Moxham so made that there was an attempted advance in the price of blasting powder, was it not? A. Yes.

Q. And then within two or three weeks after that advance had been made by the association Mr. Waddell tendered his resignation, did he not, to the du Pont Powder Company? A. That is my recollection.

Q. And engaged in this enterprise of the Buckeye Powder Company; is not that so? A. Yes, sir.

5362

Jonathan Haskell—Cross

Q. Just as when the advance was made in 1896 Mr. Rood resigned and started out with the Indiana Powder Company, was it not? A. Yes.

Q. History repeating itself? A. Yes.

Q. You were, if you will recall, being interrogated just before the noon recess with reference to a statement of prices of \$1.25 east of the Mississippi River and of \$1.35 west of the Mississippi River? A. Yes.

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Q. As being applicable to the condition of 1902 and 1903. Do you recall it? A. That is my understanding of it.

Q. I will ask you to read your testimony on pages 1063 and 1064 of volume 2 and ask you after reading those whether those prices referred to 1896 or 1902 and 1903? A. (After examination.) The first advances spoken of refer to just after the 1896 agreement.

Q. In the middle of page 1064 you will see this question: "Does that answer refer to the 1896 or the 1902 and 1903 prices?"——

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A. The readjustment spoken of as occurring later refers, of course, to the winter of 1902 and 1903.

Q. That is your understanding of that? A. Yes.

Q. Now referring to the 1896 agreement this was your testimony: "Q. What was the purpose of that agreement? A. The purpose of that agreement was to establish reasonably remunerative prices and to prevent a continuance or a reoccurrence of the ruinous trade warfare that had existed between the older companies and the newer ones too. Q. Was that open to any company to come in if they desired? A. I don't know that the question was raised. Q. Was there ever any operation under that agreement conducted for the purpose of regulating competition against outside companies? A. I don't think that I understand your question.

(Question withdrawn.) Q. Was there any purpose in making that agreement, to use the association or pool of these companies as a means of conducting competition against companies that did not belong to the agreement? A. There was not. Q. Did the agreement itself fix any price? A. It did not. Q. That was to be regulated by the Advisory Committee? A. A provision was made for the Advisory Committee to fix prices in the various territories. Q. In the absence of that agreement, would these results have presently been accomplished that you have spoken of in your opinion—that a disastrous to the weaker companies? A. It seems to me there could have been no other outcome. Q. In your opinion was that agreement essential for the protection of the weaker ones of these companies? A. It was essential to their interests and was more important that such an agreement should be made for the benefit of the weaker ones than for the stronger concerns. Q. What did the association do in reference to prices? A. It advanced its prices twenty-five cents per keg, and, later, an additional ten cents per keg. Q. This brought the price to how much, east of the Mississippi River? A. That brought the price at that time to \$1.25 in the States of Indiana, Ohio and Illinois. Q. And how much west of the Mississippi River? A. The states immediately west of the Mississippi were ten cents higher and south of the Ohio were ten cents higher. As you got further west and further south the price advanced still more. Q. Were those prices ever increased any further? A. A readjustment of prices, which was made in the winter of 1902 or 1903 resulted in some advances, but was not a material change from what was in effect at the time the price schedule was adopted or when the association was first formed. Q. Were these prices of \$1.25 each of the Mississippi River and \$1.35

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Jonathan Haskell—Cross

west of the Mississippi River in your opinion, reasonable prices for black powder? A. They were."

Q. I will ask you, Mr. Haskell, what period you referred to when you said the prices of \$1.25 east of the Mississippi River and \$1.35 west of the Mississippi River were reasonable prices?

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A. My answer referred to the former part, I think—the question as to the fairness of the price referred to the advance immediately after the 1896 agreement. The price was not \$1.25 after the prices had been advanced in the winter of 1902 and 1903.

Q. So the prices referred to were the prices of the advance in 1896? A. Yes.

Q. That is what I wanted to bring out.

The Court: Did you not give the prices of \$1.25 and \$1.35 in 1902 and 1903?

The Witness: That was only the single carload prices. As I say, at that time the rebate brought the great bulk of the prices below the price of 1902 and 1903.

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Mr. Katzenbach: I did not hear your Honor's question.

The Court: I asked whether he did not give the prices of \$1.25 and \$1.35 for 1902 and 1903.

Q. Were the prices of \$1.25 and \$1.35 the prices following the rise in 1902 and 1903? A. No, because at that time there were reductions for various sizes of trade which brought the price down and the general average was not what it was in 1896 when there were low prices.

Q. Then the price was for single carload lots? A. Yes; in 1902 and 1903.

Q. And when there were more than single carload lots taken by a customer the prices were very

much less than \$1.25 and \$1.35? A. From five to twenty cents a keg.

Q. Do you not remember that the advance advocated by Mr. Moxham was for \$1.25 and \$1.35? A. Yes.

Q. For single carload lots? A. Yes.

Q. This advance of 1902 and 1903, though, met the same fate as the advance of 1896, did it not? A. It was not carried out. We failed to hold it.

Q. And that was due to the competition, was it not? A. Yes, before the advanced prices really became effective through the maturing of many contracts the competition came in to such an extent that it practically never was advanced to that price. 5372

Q. It never took effect, is that true? A. It practically never took effect.

Q. To your knowledge that is what always has happened, is it not, when an advance of that kind had been made, since you have been connected with the powder business? A. That is the case for the last seventeen years.

Q. And that is the entire time you have been connected with the business? A. Yes. 5373

Q. Mr. Haskell, you referred to a letter that was written by Mr. Moxham in which the words "inside" and "outside" competition were referred to. There was never any action by the Association dividing any competition into inside competition and outside competition, so far as you know, was there? A. I don't recollect exactly what was done. Nothing was ever effected.

Q. You do not recollect anything of that kind? This was in 1902 that Mr. Moxham's letter referred to that. You do not know of anything that was done in the association after that relating to inside and outside competition, do you? A. All that that letter was intended to do, or to organiza-

tion which was created at that time, was to use such effort as we might to furnish an intending investor in the powder business with actual information as to the profits and prices prevailing in the powder business, because nearly every one before he went into the powder business had the impression that powder could be manufactured for about 50 to 55 cents a keg, and that there was an immense sum of money in it, and the effort that was intended, and the only effort that was ever proceeded in by that committee was to go to the various proposed investors in powder companies and give them actual facts as to the profits that they could expect if they went into the enterprise.

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Q. That is the finance committee that you are speaking of, to which reference was made? A. That is my understanding.

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Q. Your attention was directed by counsel for the plaintiff to a letter that you had written to J. G. Miller under date of August 26, 1895, and your attention was directed to the following sentence in that letter: "The gist of the whole matter is that if trade has been taken from us we want it back, but we do not think it wise to divert trade from the du Pont, Hazard or Oriental companies by cutting, as that would merely lead to retaliation and do no one any good." The inquiry stopped there. The following sentence is as follows: "In cases where we could divert trade from our so-called associates we should prefer part rather than all and with no more fuss than necessary." Now, then, as a matter of fact, you were, for the Laflin & Rand Company, seeking to get trade for your company, were you not? A. Yes.

Q. Either by the qualities of your powder or by the activity and proper representations as to its worth by your agents and salesmen, were you not? A. Yes.

Q. This letter, which has been referred to merely, contains as I understand it, a general circular letter which you circulated broadcast among the agents and salesmen of the Laflin & Rand Powder Company about this date of August 26, 1895, giving them general instructions as to business. Is that correct? A. Yes, and indicating the general policy to a new employe, Mr. Miller.

Q. Yes. And you at that time had not severed wholly your connection with the Rapauno Chemical Company or the Hercules Powder Company, had you? A. I was still president— 5378

Q. President of both those companies as well as president of the Laflin & Rand Company? A. Yes.

Q. There were no explosives that were made by the Rapauno Chemical Company and Hercules Powder Company similar to those made by the Laflin & Rand Powder Company, were there? A. No.

Q. And would Mr. Miller also be acting for the higher explosives companies? A. No, he was only for the Laflin and Rand Company.

Q. He sold only for the Laflin and Rand Powder Company? A. Yes. 5379

Q. You were asked with reference to the stockholders of the Laflin and Rand Company and you gave them. You gave their names, I believe, upon direct examination, did you not? A. Yes.

Q. You were personally acquainted with all these stockholders of the Laflin and Rand Powder Company, were you not? A. I named the estate of William Barclay Parsons; but I knew all the others.

Q. But you knew all the others? A. Yes.

Q. You knew them personally, did you not? A. Yes.

Q. Were not most of the stockholders of the Laflin and Rand Powder Company in 1902 men that

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Jonathan Haskell—Cross

were very far advanced in years and desirous of retiring from active business? A. Mr. Turck, whom I referred to as being a stockholder at an earlier date, disposed of his holdings and was not then a stockholder; and Mr. Riker was an old man; but the Parsons were not more than middle-aged.

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Q. Was Mr. Riker desirous, on account of his advanced age, of selling his interest in the Laflin and Rand Powder Company? A. He told me at the time that if he had the expectation of ten years of years of life he would not consider it under any consideration.

Q. And he was really the chief factor in the Laflin and Rand Company? A. He was the largest stockholder, yes.

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Q. And the other stockholders acquiesced to a very large extent in his wishes in selling out in 1902 the property of the Laflin and Rand Powder Company, did they not? A. I don't think there was much dissension. I think they were willing to sell.

Q. All of them willing to sell? A. Yes.

Q. And that was largely, as you say, brought about by the advanced age of Mr. Riker, who was the largest stockholder? A. Yes.

Q. At that time one of the Mr. Parsons had died. Which one was that? A. William Barclay Parsons, Sr. His estate owned some of the stock, but his two sons were large stockholders.

Q. Was Mr. Turck living at that time? A. Yes.

Q. But he had sold his interests prior to 1902? A. Yes; he was no longer a stockholder.

Re-direct examination by Mr. Abbott:

Q. If the sole purpose of these stockholders in selling out at that time was on account of their

age and they knew they were not going to live very long, why did you make them agree to keep out of the powder business for 25 years? A. I have said that only referred to John L. Riker.

Q. Did that refer only to him; was not that agreement made as to all of them? A. The statement I made as to age only referred to Mr. Riker.

Q. Oh; and the statement as to the age did not apply to the others. A moment ago you were shown two sets of minutes, 117-F and 117-G, and you said that those two minutes refreshed your memory. How did it happen that those two minutes were so familiar to you, Mr. Haskell, and you were not able to remember any of the other minutes I showed you from time to time?

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(Objection overruled.)

A. The transactions covered more than ordinary importance; they were more than ordinarily important episodes in the conduct of the business; and it was clearly impressed upon my memory.

Q. And you remembered those minutes for that reason, or did you simply recall independently of the minutes— A. I remember the action, not the minutes.

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Q. You did not remember the minutes at all? A. No.

Q. Then when you said you remembered those minutes that was not what you meant? A. I think I said I remembered that action being taken.

Q. I would like to know whether the Indiana Powder Company was one of the companies with which you made this arrangement—to buy out and take into your association because you wanted to help the Indiana Powder Company, because it was a weaker company and you wanted to help them?

A. I don't think I made that statement with regard to any company.

Q. What did you mean, then, when you said that it was for the interest of the association to take in these weaker companies—that it was for the benefit of the weak ones your association was organized and not for the benefit of the stronger members of the association? A. I don't remember making such a statement.

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Q. What did you say on the subject? A. I said that the result of that kind of an agreement was more to the benefit of the weaker ones than to the stronger.

Q. Very well. What did you mean, then, by that? For instance, the Indiana Powder Company—how did it help them? A. They were not taken in.

Mr. Katzenbach: They were not in.

A. (Continuing): They were not participants in the 1896 agreement.

Q. Then all finally came into the association when you bought them? A. When they were bought they were given an allotment, yes.

5388

Q. And it was for their benefit, was it, you bought them out or took them in? A. No; for ours.

Q. That is right, and does not that same answer apply to all the companies which you took over from time to time into the association—it was for your benefit and not for theirs? A. I think I have clearly denied any philanthropic intentions.

Q. I did not understand that you had. You also stated awhile ago something in connection with Mr. Waddell's resignation in 1905, which took place after the Moxham speech in 1902, that that was "history repeating itself." What did you have in mind when you said that?

A. I would not think I said or intended to say that Mr. Waddell's resignation resulted in the organization of new companies. What I did say was that when the price was advanced new com-

panies always came in, and counsel asked me whether shortly after that Mr. Waddel did not resign, and I said yes.

Q. And that is what you mean by history repeating itself? A. Whenever prices advanced it brought in new competition.

Q. Oh yes. Do you know as a matter of fact that Mr. Waddell resigned before the speech by Mr. Moxham was made? A. I do not.

Q. If that is a fact then what connection would there be between the speech of Mr. Moxham and the resignation of Mr. Waddell? A. I have attached none.

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Q. You have not attached any? As a matter of fact, Mr. Waddell's resignation was made November 25, 1902, was it not? A. I know nothing about it.

Q. And the speech of Mr. Moxham was in the month of December—December 19, 1902—was it not? A. I don't know the date at all.

Q. In regard to these contracts which you say were made by some of the members of the association previous to 1897, did you ever see any one of those contracts yourself? A. My recollection is I signed some of them for Laflin & Rand.

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Q. And you saw them if you signed them for the Laflin and Rand Powder Company. Do you know whether any of those contracts had any provisions in them with reference to rebates? A. At that time?

Q. Yes. A. I don't think so.

Q. That was one of the things that came into the new system of contracts which had not prevailed in any contract known before that, was it not? (Objection overruled). A. Yes.

Q. You referred to the Egyptian Powder Company and the United States Powder Company, which were competitors. What years did you have

in mind that those companies were competitors? A. I don't recollect the exact years, but they came on soon after the Buckeye started.

Q. As a matter of fact, was not the Egyptian Company largely owned by Olin of the Equitable Powder Company? A. Not at that time.

Q. When was it that the company came to be owned by him? A. He purchased it later; I don't remember the date.

5393 Q. How much later? A. I don't recall.

Q. As a matter of fact was not the United States Powder Company largely owned by him? A. No.

Q. Not at any time? A. Not at that time.

Q. Well, was it at any time after that? A. I understand he owns some of the stock now.

Q. Was it not acquired during this period you have testified to? A. What period do you refer to?

Q. During the period you speak of the Buckeye being in business? A. I spoke of the Buckeye being organized, and soon thereafter these companies being started up.

5394 Q. Between 1903 and 1908 then, so as to be specific? A. Whether or not Mr. Olin purchased his stock before 1908 in the Egyptian or the United States I do not know, but if he did it was the latter part of that time.

Q. You were a director of the Equitable Powder Company, were you not, during this period? A. Yes.

Q. And you ought to have known something of what Mr. Olin was doing? A. I knew at the time, but I don't recall the date.

Q. I see. You have testified in regard to the terms of this Sullivan agreement, and you have mentioned some of the terms as relating to the quota of trade only. How do you happen to recall so definitely that that was all that was mentioned

in that agreement? Do you know of the agreement, where it is, have you seen it lately? A. No.

Q. You have not looked it up to refresh your memory in any way? A. No.

Q. You do not know anything about the terms of the agreement except as you recall them; is that correct? A. That is all.

Q. There might have been some provision in that with reference to prices? A. I know there was not.

Q. You know there was not. How does it happen you know that so emphatically when you don't know whether the agreement is in existence? A. The agreement was made by my direction; I authorized the terms. 5396

Q. Tell us what the terms were? A. The only thing it was to cover was an agreement as to allotment of trade, certain percentages which might be sold by the du Pont interests for dynamite and black powder, and if no further sales were made no payment was to be made either way; but in case the du Pont Company exceeded its quota it was to pay a certain rate, the amount of which I do not now recall, for such oversales; and vice versa. 5397

Q. You remember my showing you a document on your direct examination and asking you whether that was the Sullivan agreement, do you not? A. I recollect your showing me several detached sheets of paper.

Q. Very well. I show you now the same thing, P-201, in what is known as the Fay deposition. A. I am unable to state about it.

Q. But you said that you directed that that agreement be prepared and that you knew all about its terms. Can you not look at that and state? A. I can look at this and see whether it embodies the terms that I authorized. My recollection is that that is what it embodied when I looked at it the other day.

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Q. You think that that embodied the terms? A. As I recollect it, it covers the salient points. There seems to be nothing in that outside the terms I have described already.

Q. Then this is a true and correct statement, you think, of what was in the Sullivan agreement? A. I don't know whether it is or not.

Q. Can you not say what your belief is on that subject? A. I cannot tell. I did not recollect and I do not recollect that that was the form of memoranda, if any memoranda was exchanged.

Q. You do not know whether any memoranda was exchanged at all? A. I do not.

Q. I want to ask you now a little in regard to the Indiana Powder Company, as that has been referred to quite extensively. You stated, Mr. Haskell, that all of the activities on the part of the Indiana Powder Company or, rather, all of the activities for the purpose of bringing about a settlement of the differences between the Indiana Powder Company and the associated companies, was taken by the owners of that company, Mr. Rood and others. I want to call your attention to the following minutes, contained in 122-G, at page 1164. "Meeting of July 22d, 1898. The Secretary presented a report of the Committee dated April 22d, 1898, to treat with the Indiana Powder Company, reading a letter from Mr. Eugene du Pont, under date of the 21st instant, the same being in effect a report of said Committee, which consisted of Mr. du Pont and Mr. Olin, and also read a number of letters upon the same subject which had passed between two members of the committee and letters to and from the president of the Indiana Powder Company. On motion: That the report of the Committee be accepted, and that those gentlemen be asked to confer with the Indiana Powder Company with a view to ascertain, if

practicable, whether or not they would be likely to arrange for a limitation of their products in volume, such as might be acceptable to the companies represented by this Committee, and the Advisory Committee suggests that it may possibly be desirable to make a contract with the Indiana Powder Company which might limit its product from year to year, rather than that they should become parties to our present understanding. Suggesting also that such a contract in limitation should be on lines similar to those of the contract with Arthur Kirke & Sons, and the same was carried unanimously." Do you remember that action was taken by your board? A. I do not understand what the question refers to—a contract being made or an effort was being made to carry out the wishes of the Advisory Committee?

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Q. My question was directed to this point: I want to know whether all of the steps taken to bring about a settlement of the differences, whatever these might have been, between the Associates, and the Indiana Powder Company, were taken by Mr. Rood and his associates or by the representatives of the associated companies, and I am reading you this particular minute for the purpose of finding out whether you can recall that that was one of the actions taken by the associated companies? A. I have no recollection of this action other than as brought up here, but I think very likely it is correct. The statement I made before was in answer to a question of counsel as to what steps we took towards getting them to sell out, and I replied that we took up one of the occasions, of which there were several, when the Indiana Company approached us, or a stockholder of the Indiana approached us with a view of asking us to buy them out.

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Q. Then you do not want it inferred that all of the action was taken by the Indiana Powder Com-

pany representatives? A. In regard to the selling out of their business or the acquisition by us of their business, I do.

5405 Q. Very well. On page 1234 I call attention to the following portion of the minutes of the general meeting of March 8, 1904: "Mr. Eugene du Pont was made chairman of this meeting. * * * The meeting considered the matter of negotiating for the purchase of a certain piece of property, which had been offered for sale, and which some of the parties present believed it to be for the general interest to purchase if the terms of sale should appear to make it desirable. For the purpose of such negotiations: On motion of Mr. Lent, seconded by Mr. J. B. Coleman: That a committee be appointed to consist of Mr. Haskell, Mr. Eugene du Pont and Mr. Connable, with power to act in this matter." What was that certain piece of property? A. I don't recall.

Q. Was it not the Indiana Powder Company?
A. It may have been.

5406 Q. Was not that about the time? A. It was about the time it was bought, yes.

Q. That was in 1900, and you state that this Indiana Powder Company began its activities in 1897. Now, immediately after the purchase of the Indiana Powder Company you increased your prices, did you not? A. Such is not my recollection.

Q. Did you withdraw the prices then prevailing in that district? A. I don't think the prices were changed at all.

Q. I call your attention to meeting of the advisory committee of February 21, 1902. This was a meeting that first announced the death of Mr. Eugene du Pont, and then it proceeded as follows: "On motion duly made and seconded that all prices below \$1.10, except on existing contracts in Illinois, Ohio and Indiana be withdrawn," and so forth? Do

you recollect that? A. I don't recall that except as you have read it.

Q. I show you Government's Exhibit 391 in volume 5 of the exhibits of Petitioners, and I ask you to look at the list of names set forth there and ask you to state whether or not that is a correct list of the companies engaged in the manufacture of high explosives which were acquired by the Eastern Dynamite Company from time to time? A. (After examination) I cannot state whether it is or not.

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Q. Have you looked at it in detail or do you just say that without examination? A. I could not know without referring to the record to see whether the list is correct.

Q. Do you not know any of those companies? A. I know the names, surely.

Q. Do you not know whether you acquired those companies from time to time? (Objection overruled.) A. Some of them we did and some of them we did not (referring to list). The Acme Powder Company was acquired; The Anthony Powder Company not acquired; American Forceite Powder Manufacturing Company was acquired; Blue Ridge Powder Company was acquired; Bradford Glycerine Company was acquired; Brooklyn Glycerine Manufacturing & Refining Company was acquired; Climax Powder Company was acquired; Columbian Powder Company was acquired; Clinton Dynamite Company was acquired; Dittmar Powder & Chemical Company was acquired; Explosive Supply Company not acquired; Gogebic Powder Company was acquired; Hecla Powder Company was acquired; Hudson River Powder Company was acquired; Hercules Powder Company was not acquired; Independent Powder Company was acquired; A. Kirk & Son Company was acquired; Missouri Supply Company was not acquired; Mt.

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Wolf Dynamite Company was acquired; New York Powder Company of New York was not acquired; Nitro Powder Company was acquired; Pennsylvania Torpedo Company was acquired; Repauno Chemical Company was not acquired; Rock Glycerine Company was acquired; Robina Fuse Company was acquired; Standard Explosives Company was not acquired; Sterling Dynamite Company was acquired; H. Julius Smith Electric Fuse Company was acquired; A. S. Speece Powder Manufacturing Company was acquired; Thompson Torpedo Company was acquired; United States Dynamite Company was acquired; Weldy Dynamite Company was acquired.

Q. Then out of the whole number that you have read there were only seven that were not acquired?
A. I cannot recall the number.

5412

Q. You stated that this 95 cent price was not made in any case where you had information that it was a less price than a competitor was making. Now, I will ask you to state whether or not in the case of the Dering Coal Company you did not make a price on the 15th day of May of 95 cents and at that time the Buckeye Powder Company was selling to the same company at \$1. Do you remember that is a fact? A. I don't recall it.

Q. If that is a fact then the information you received was erroneous. Is that correct? A. I think I have made the statement that if a competitor was either making it or ready to make it.

Q. Oh, yes. Do you not know as a matter of fact that the Buckeye Powder Company continued to sell at \$1 until October 10, 1905? This price was made in May, 1905, made with customers of the Buckeye? A. I have no knowledge as to sales of the Buckeye Powder Company.

Q. You stated a while ago that you did not make any of these prices any lower than any other com-

pany and that was based on information given to you. If that is a fact then your information was erroneous, was it not? A. The Buckeye may not have been the only competitor in that case, and my understanding is that they were not the entire possessors of the Dering trade.

Q. And then as to the Donk Brothers, would that also be your conclusion? A. I don't know anything about Donk Brothers. They may not have been our customers.

Q. If that is a fact your information may have been entirely erroneous? A. There is no question we made the most earnest efforts we could to get the exact facts. 5414

Q. But you do not know whether you always got them? A. It would be pretty hard to know whether we did.

Q. You do know about the Dering Coal Company being an important consumer of black blasting powder? A. I know it became such.

Q. And don't you know that the Donk Brothers were exceedingly large consumers? A. They were not in the same class with the Dering Brothers, I think. 5415

Q. But was not the Donk mine one of the most important producers of coal in Illinois, and is it not yet one of the largest purchasers there? A. I don't think they were as large as the Derings.

Q. Very large, though? A. I don't know how large.

Q. If you had kept in close touch with the business of the sales board you would have known regarding those matters, would you not? A. I have stated before that I think the Donk Brothers were not our customers. They were Miami customers, as I recollect, although I am not sure of that.

Q. That is all very true, but were you not from time to time making the 95 cent price to them? A. I don't think so. We may have been doing so.

5416

Armand Bruneau—Direct

Q. If the statement presented here known as No. 1248 says so, it is probable true, is it not? A. If the statement was made by Mr. Coyne it is true.

Mr. Abbott: That is all.

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Thereafter certain documents contained in plaintiff's identification P-3 were received in evidence as plaintiff's exhibits, said documents being marked Government's exhibits 129-A, 129-B, 129-C, 129-D, 129-E, 129-F, 129-G, 129-H, 129-I, 129-J, 129-K, 129-L, 129-M, 129-N, 129-O, 129-P, 129-Q, and 131, 131-A, 131-B, 131-C, 131-D, 131-E, 131-F.

ARMAND BRUNEAU was called as a witness on behalf of the plaintiff, and being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

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Q. Mr. Bruneau, where do you reside? A. I live at 571 9th Street, Brooklyn, N. Y.

Q. What is your business? A. Certified public accountant.

Q. How long have you been a certified public accountant? A. I have had my degree for nearly two years. That is my full degree, and I passed my examination nearly three years ago.

Q. From what institution did you obtain your degree? A. That is from the University of the State of New York, which is a regular degree authorized by the laws of the State of New York.

Q. Where are you employed at the present time? A. I am employed with Arthur W. Smith & Company, 25 Broad Street, New York.

Mr. McCarter: What concern?

The Witness: Arthur W. Smith & Company.

Q. Did you have any experience in accounting matters before you obtained your degree? A. A great deal.

Q. State what that was? A. Well, suppose I start with the beginning of my experience.

Q. Very well. A. I started to work for a living when I was about twelve and a half years old, in 5420 Montreal, and worked there for——

The Court: Just tell what experience you have had in the way of accounting.

The Witness: In the way of accounting?

The Court: Yes.

A. I have had over five years' experience with the Connecticut Railway & Lighting Company, of Bridgeport, Conn., in their general accounting offices. I went through most every position in their offices, and for two years I was assistant to their auditor, preparing their financial statements, balance sheets, profit and loss, and all kinds of statements in connection with their business, which covered street railway, electric lighting and gas accounting. 5421

By Mr. Abbott:

Q. How old a man are you, Mr. Bruneau? A. I am 27. I will be 28 next April. I have not finished with my experience, Mr. Abbott.

Q. Very well. A. From Bridgeport I went to Waterbury, Conn., with the Noera Manufacturing Company, and I did work, kept their books, and did all kinds of work for them, and accounting

work in connection with the calculation of costs and general work, and I also spent a little time with the Waterbury Button Company, keeping their books; and from there I went to New York with the John Matthews Soda Water Company, 333 East 26th Street, New York. With that concern I was two years, I kept their books, and was assistant to the treasurer; and from there I went with Arthur W. Smith & Company, by whom I am employed very nearly three years.

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Q. What position do you hold with that company? A. Why, at the present time, Mr. Smith, who is the principal man, Arthur W. Smith, in the firm, in the corporation of A. W. Smith & Company, he is in Europe, and at the present time I am running the entire business of the concern.

Q. Do you know the rule which is used by accountants generally in estimating the value of good will of a manufacturing plant? (Objection overruled.) A. Yes, sir.

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Q. What is that rule? A. The rule is to determine the average earnings of a concern for a period of time—we take the average earnings of the concern and we multiply those earnings by from three to five, and we arrive at a certain total, and from that total we deduct a reasonable amount for depreciation, whatever it may call for; we deduct interest on the capital invested; and we deduct sufficient provision for reserve funds and so forth, according to the particular case.

Q. Take a concrete example: Suppose the earnings of a expert testimony of the damage of something that does not exist. A. \$75,000 annual earnings a year, you say. I would deduct from that a reasonable amount for depreciation, based of course on the amount of the investment in plant and machinery and tools.

By the Court:

Q. What is that reasonable amount? A. In the case of a manufacturing concern of this nature I believe 5 per cent would be a reasonable amount. It is one that is used a great deal, an average of 5 per cent. Some will depreciate more and some less.

Q. Well, what would be the range that you would take for depreciation? A. From $2\frac{1}{2}$ per cent to $7\frac{1}{2}$ per cent.

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By Mr. Abbott:

Q. Then, why in this case do you take 5 per cent when $2\frac{1}{2}$ per cent would be a fair range?

Mr. Katzenbach: I object to that.

The Court: He can state the rule, and he must give the range.

A. It depends on the nature of the assets. Some assets depreciate more than others.

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The Court: Certainly, but give the range.

A. $2\frac{1}{2}$ to $7\frac{1}{2}$ per cent in my opinion.

Q. Is that the rule used by accountants? A. Of course they have to consider the nature of the assets. You cannot make an absolute rule, but in the case of a manufacturing concern, it is what is used.

Q. I wish you would confine yourself to the rule used by accountants now. Please state what you would do next with that \$75,000 income? A. Having determined the depreciation, I would determine the interest on the capital invested in the plant and machinery. Take a fair interest on the capital, which would be about 6 per cent—

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Armand Bruneau—Direct

The Court: (To the Witness.) That would be on capital paid in, you mean?

A. (Continuing) Yes, and capital invested. If it had capital, \$100,000, at 6 per cent, that would be \$6,000 against their earnings that year. In other words——

Q. Now what is the next? A. And the next would be an amount for reserve funds, depending on the character of the business.

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Q. What is that as a general rule? How much is that as a general rule? A. That would vary according to the nature of the business.

By the Court:

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Q. Give the range. A. I should say usually they set aside an amount equal to the dividend paid; that is, an amount for reserve funds. That is to be conservative and to run your business properly, if your total earnings were \$20,000 a year, you would pay \$10,000 of that in dividends and set aside \$10,000 for reserve, to accumulate a surplus, and that may be set aside for any special purpose.

Q. That would be 50 per cent on earnings? A. Yes.

Q. Does it usually range as high as fifty per cent on earnings? A. Yes; it ranges more than fifty per cent; I believe, in some cases, it would range much more, and sometimes they pay out all their earnings in dividends.

By Mr. Abbott:

Q. What would be the reason for a higher range? A. They might have some of their earnings tied up in plant. They may follow the policy of rein-

vesting in plant, and then it is not in a condition to pay out to stockholders.

Q. Would the character of the business so far as the hazards are concerned, have anything to do with it? A. What is that?

Q. I say would the character of the business so far as the hazards run have anything to do with that amount? A. Certainly; you would have to consider that, in case there might be contingencies, or the plant might blow up, I suppose, in this case, you would have to consider that. 5432

Q. Is there anything else you would deduct? A. Give them depreciation, interest on capital and reserve fund for contingencies.

Q. Then there is nothing else that is deducted from the total amount of the earnings? A. Not that I think of now.

Q. So that the balance that would be left then would be the amount of the net profits? A. Would be absolutely net profits. In fact it would be somewhat less than the net profit.

Q. Is that the amount, then, the balance that would be left then in ascertaining the good will? A. There is one point I have not made quite clear in reference to those reserve funds. The idea I want to get before you is that first we take the amount of depreciation; second, the interest on the capital invested, and, third, an amount to provide for contingencies and reserves according to the nature of the business. For instance, in the case of a street railway company, they set aside a certain percentage of their earnings to provide for accidents. They have accidents to passengers, and eventually those passengers get damages, and they set aside a sum to cover that. 5433

Mr. Katzenbach: That is not the uniform rule, though——

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Armand Bruneau—Direct
INTERLOCUTORY DECREE.

A. (Continuing.) The net result of their making those deductions is earnings, and I have said that they should be multiplied to determine the good will, which is the rule followed by accountants generally speaking.

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Q. Taking the example of a plant earning \$75,000 a year, after you had made your deductions such as you have indicated, what would you think would be a fair proportion of that \$75,000 that would be used in calculating the good will?

Mr. Katzenbach: Objected to.

The Court: I suppose he means the difference.

Mr. Abbott: Yes, he means the difference.

By the Court:

Q. Is that it? A. Yes.

Q. For what period? A. For a year. That is, taking a year—you should take two or three years and get the average annual——

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Q. I mean to fix the value of the good-will. How many years do you take? A. Three years. I did take three years in this case. It runs from three to five years.

And thereafter plaintiff's counsel offered an interlocutory decree entered by the United States District Court for the District of Delaware, entered on the 21st day of June, 1911.

In the case of The United States of America, petitioner, against E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours Powder Company (of New Jersey), du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, The Hazard Powder Company, Laflin &

Rand Powder Company, Eastern Dynamite Company, E. I. du Pont de Nemours Powder Company (of Delaware), E. I. du Pont de Nemours and Company of Pennsylvania, The King Powder Company, Austin Powder Company of Cleveland, California Powder Works, Conemaugh Powder Company, Fairmont Powder Company, International Smokeless Powder and Chemical Company, Judson Dynamite and Powder Company of California, Metropolitan Powder Company, Peyton Chemical Company, The Aetna Powder Company, The American E. C. & Schultze Gunpowder Company, Limited, The American E. C. & Schultze Gunpowder Company, Limited, The American Powder Mills, The Anthony Powder Company, Limited, The Equitable Powder Manufacturing Company, The Miami Powder Company, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry A. du Pont, Harry F. du Pont, Irene du Pont, Francis I. du Pont, Pierre S. du Pont, Thomas Coleman du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Henry F. Baldwin, Edmond G. Buckner, and Frank L. Connable, Defendants. And also the final decree entered by the same Court in the same cause on the 13th day of June, 1913.

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Said offer was objected to.

The Court (after argument) : I assumed from the beginning of this trial that this offer would be made, and I confess it has given me a great deal of trouble. The rule invoked by counsel is so well grounded that I would not be justified in attempting to distinguish this particular kind of a case so as to take it out of the rule. The rule of course had its origin long before corporations were in existence. My own judgment is that that new state of facts has laid a foundation for excepting such cases as this from that rule; but here we have had

5440

Interlocutory Decree

thirteen weeks taken up in presenting the plaintiff's case—and how much more will be taken up I do not know—and I do not think this Court would be justified in taking a doubtful ground upon such an important question. Expediency alone forces the Court to deny the offer and give the plaintiff the benefit of the exception. As I say, I think the reason is all the other way, but I am only the Trial Court, the Court of first instance, and I am not going to take any chances with it. Therefore it is overruled.

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To which ruling plaintiff's counsel then and there excepted and said exception was allowed.

(The following is the interlocutory decree so offered and refused.)

INTERLOCUTORY DECREE.

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This cause coming on to be heard before the three Circuit Judges of the Third judicial circuit in the Circuit Court of the United States for the District of Delaware, under the provisions of the expediting act of February 11, 1903, in the presence of George W. Wickersham, Attorney General of the United States, William S. Kenyon, assistant to said Attorney General, and James Scarlet and William A. Glasgow, Jr., special assistants to said Attorney General, and Frederic Ullmann for the defendants the American Powder Mills, the Miami Powder Company, and the Aetna Powder Company, M. B. & H. H. Johnson, for the defendant the Austin Powder Company, Frederick Seymour, for the defendant the Equitable Powder Manufacturing Company, David T. Marvel and David T. Wat-

son, for the defendant Henry A. du Pont, Burton B. Tuttle, for the defendant the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, and William H. Button, for the remaining defendants, and the court having read the pleadings and proofs and heard the argument of counsel, and duly considered the same; and it appearing to the court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

It is thereupon, on the 21st day of June, A. D. 1911, ordered, adjudged, and decreed, and this court, by virtue of the power and authority duly conferred on it by law, does hereby order, adjudge, and decree as follows, to wit: 5444

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited, American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. du Pont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, and E. I. du Pont Company of August 1, 1903. 5445

2. That the remaining 28 defendants, namely, Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, International Smokeless Powder & Chemical Company, Judson Dynamite & Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de Nemours & Co. of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Co., Thomas Coleman du

Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenne du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of section 1 of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, that they have attempted to monopolize and have monopolized a part of such commerce in violation of section 2 of that act, that they shall be enjoined from continuing said combination, and that the combination shall be dissolved.

3. That this court, in order to obtain such further information as shall enable it to frame a final decree which shall give effective force to its adjudication, will hear the petitioner and the defendants on the 16th day of October next as to the nature of the injunction which shall be granted herein and as to any plan for dissolving said combination which shall be submitted by the petitioner and the defendants, or any of them, to the end that this court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to re-create, out of the elements now composing said combination, a new condition which shall be honestly in harmony with and not repugnant to the law.

4. That both parties have leave to take such additional proofs as they may deem proper to be used at the hearing aforesaid.

5. That, until the entry of final decree herein, said 28 defendants hereinabove last named are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from

doing any acts or act which shall in any wise further extend or enlarge the field of operations or the power of the aforesaid combination.

(Signed) GEO. GRAY,
 JOS. BUFFINGTON,
 W. M. LANNING,

Circuit Judges of the Third Judicial Circuit.

(Certificate of Clerk affixed.)

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(The following is the final decree so offered and refused) :

FINAL DECREE.

This cause coming on to be heard for final decree in accordance with the interlocutory decree entered herein on the 21st day of June, A. D. 1911, before the three Circuit Judges of the Third Judicial Circuit in the District Court of the United States for the District of Delaware, in the presence of George W. Dickersham, Attorney-General of the United States, and James Scarlet, William A. Glasgow, Jr., and Victor N. Roadstrum, special assistants to said Attorney-General, and Ullmann & Hoag, for the defendants, the American Powder Mills, the Miami Powder Company and the Aetna Powder Company; M. B. & H. H. Johnson, for the defendant, the Austin Powder Company; Frederick Seymour, for the defendant, the Equitable Powder Manufacturing Company; David T. Marvel and David T. Watson, for the defendant, Henry A. du Pont; Burton B. Tuttle, for the defendant, the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, Frank S. Katzenbach, Jr., and William H. Button, for the remaining defendants, and this Court by said interlocutory decree having con-

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sented to hear the petitioner and the defendants herein as to the nature of the injunction which shall be granted herein and as to a plan for dissolving the combination found herein by said Court to exist, to the end that this Court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to recreate out of the elements now composing said combination a new condition which shall be honestly in harmony with and not repugnant to the law, and the Court having heard argument of counsel herein and having duly considered the matter, and it appearing to the Court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

It is thereupon, on this 13th day of June, A. D. 1912, ORDERED, ADJUDGED AND DECREED, as follows, to wit:

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited; American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. du Pont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, E. I. du Pont Company of August 1, 1903, and International Smokeless Powder and Chemical Company.

2. That the remaining twenty-seven defendants, namely: Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, Judson Dynamite &

Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de Nemours & Company of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of Section 1 of an act entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2, 1890, and have attempted to monopolize and have monopolized a part of such commerce in violation of Section 2 of said Act.

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WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the twenty-seven (27) defendants aove mentioned, and each of them be enjoined from continuing said combination and monopoly, and that said combination and monopoly be dissolved.

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3. That the petitioner having availed itself of the permission granted in said interlocutory decree and having presented a certain plan for the dissolution of said combination and the dissolution of said monopoly, so far as the present situation of the parties and the properties involved will permit, to which said plan the said twenty-seven (27) defendants do not object, which said plan is as follows:

FIRST. Dissolve the defendant corporation E. I. du Pont de Nemours & Company (1902 Delaware corporation) and distribute its property among its stockholders.

SECOND. Dissolve the defendant corporation Hazard Powder Company and distribute its property among its stockholders.

5459 THIRD. Dissolve the defendant corporation Delaware Securities Company and distribute its property among its stockholders.

FOURTH. Dissolve the defendant corporation Delaware Investment Company and distribute its property among its stockholders.

FIFTH. Dissolve the defendant corporation Eastern Dynamite Company and distribute its property among its stockholders.

5460 SIXTH. Dissolve the defendant corporations California Investment Company and Judson Dynamite and Powder Company, and distribute their property among their stockholders.

SEVENTH. Organize two corporations in addition to E. I. du Pont de Nemours Powder Company (1903, New Jersey Corporation), which shall be capitalized as hereinafter provided, or reorganize the Laflin & Rand Powder Company and the Eastern Dynamite Company, or either of them, to be used instead of one or both of said two corporations, and in case the said Eastern Dynamite Company is so selected, then it need not be dissolved as hereinbefore provided. In case the Laflin and Rand Powder Company is not used under this paragraph, dissolve said Company and distribute its property among its stockholders.

To the first of said corporations transfer the following plants:

For the Manufacture of Dynamite:

Plant at Kenville, New Jersey,
Plant at Marquette, Michigan,
Plant at Pinole, California.

For the Manufacture of Black Blasting Powder:

Plant at Rosendale, New York,
Two (2) plants at Ringtown, Pennsylvania,
Plant at Youngstown, Ohio,
Plant at Pleasant Prairie, Wisconsin,
Plant at Turck, Kansas,
Plant at Santa Cruz, California.

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For the Manufacture of Black Sporting Powder:

Plant at Hazardville, Connecticut,
Plant at Schaghticoke, New York.

To the second of said corporations transfer the following plants:

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For the Manufacture of Dynamite:

Plant at Hopatcong, New Jersey,
Plant at Senter, Michigan,
Plant at Atlas, Missouri,
Plant at Vigorit, California.

For the Manufacture of Black Blasting Powder:

Plant at Riker, Pennsylvania,
Plant at Shenandoah, Pennsylvania,
Plant at Ooltewah, Tennessee.
Plant at Belleville, Illinois,
Plant at Pittsburg, Kansas.

And permit the said defendant E. I. du Pont

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Final Decree

de Nemours Powder Company to retain the following plants:

For the Manufacture of Dynamite:

- Plant at Ashburn, Missouri,
- Plant at Barkdale, Wisconsin,
- Plant at du Pont, Washington,
- Plant at Emporium, Pennsylvania,
- Plant at Hartford City, Indiana,
- 5465 Plant at Louviers, Colorado,
- Plant at Gibbstown, New Jersey,
- Plant at Lewisburg, Alabama.

For the Manufacture of Black Blasting Powder:

- Plant at Augusta, Colorado,
- Plant at Connable, Alabama,
- Plant at Oliphant Furnace, Pennsylvania
- Plant at Mooar, Iowa,
- Plant at Nemours, West Virginia,
- Plant at Patterson, Oklahoma,
- 5466 Plant at Wilpen, Minnesota.

For the Manufacture of Black Sporting Powder:

- Plant at Brandywine, Delaware,
- Plant at Wayne, New Jersey.

For the Manufacture of Smokeless Sporting Powder:

- Plant at Carney's Point, New Jersey,
- Plant at Haskell, New Jersey.

For the Manufacture of Government Smokeless Powder:

- Plant at Carney's Point, New Jersey,
- Plant at Haskell, New Jersey.

EIGHTH. Transfer to or furnish the first of said two corporations with a plant for the manufacture of smokeless sporting powder and the brands now or heretofore owned by the Laflin and Rand Powder Company. Such plant to be located at Ken-ville, New Jersey, or some other suitable eastern point, and to be of a capacity sufficient to manu-facture 950,000 pounds per annum of smokeless sporting powder of the brands to be assigned to the first of said corporations.

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NINTH. Furnish said two corporations respec-tively with sufficient working capital and the neces-sary cash and facilities to enable them to efficiently carry on the business which will attend the prop-erties so to be transferred to them.

TENTH. Transfer said properties to said two corporations respectively upon a valuation thereof based on the last inventory of said properties, to include a fair valuation for brands and good-will, and issue to said E. I. du Pont de Nemours Powder Company in payment therefor securities of said two corporations respectively at par value as fol-lows: Fifty per cent (50%) of said purchase price in bonds not secured by mortgage, which shall bear interest at the rate of six per cent (6%) per an-num, payable if earned by the company during said year, or to the extent thereof earned, but not other-wise not cumulative, payable not less than ten years from date; the form of said bonds to be approved by the Attorney-General or the Court, which bonds shall be subject to call at one hundred and two (102), and the other fifty per cent (50%) of said purchase price in the stock of said two corpora-tions respectively, which for the time being shall be their entire stock issues. Upon the receipt of said stock and bonds by E. I. du Pont de Nemours

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Powder Company, distribute the said stock and one-half of said bonds or the proceeds of the sale of said bonds among the stockholders of E. I. du Pont de Nemours Powder Company. In the organization or reorganization of said two corporations to which said properties are to be transferred, provide two issues of stock in said two corporations respectively, one of which shall have voting power and the other of which shall have no voting power. So distribute said stocks among the stockholders of E. I. du Pont de Nemours Powder Company that any amounts thereof which upon said distribution shall go to any one of the twenty-seven defendants hereinbefore mentioned shall consist one-half of said stock with voting power and one-half of said stock without voting power, and provide that upon the transfer through death or by will from any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or upon the sale by any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or their respective wives or children, said stock so sold or transferred may be exchanged for stock with voting power.

ELEVENTH. Transfer to said two corporations, respectively, so far as practicable, a fair proportion of the business in explosives now controlled by E. I. du Pont de Nemours Powder Company under time contracts.

TWELFTH. During a period of at least five years furnish each of said two corporations respectively, under such arrangements as may be reasonable, such information from the records of the Trade

Bureau maintained by E. I. du Pont de Nemours Powder Company as may be desired.

THIRTEENTH. During a period of at least five years furnish to each of said two corporations such facilities, information, and use of organization, as E. I. du Pont de Nemours Powder Company may operate or possess in reference to purchase of materials, experimentation, development of the art and scientific research, as said two corporations may desire from time to time, in the interests of their business, and upon some reasonable terms as to the cost thereof to said two corporations. 5474

AND SAID PLAN having been duly considered by the Court it is ORDERED, ADJUDGED AND DECREED that the said defendants are respectively directed to proceed forthwith to carry said plan into effect, and it is further

ORDERED, ADJUDGED AND DECREED, that if said defendants shall not have carried said plant into operation and effect the same on or before the 15th day of December, 1912, then and in that event an injunction shall issue out of this Court restraining the said defendants in paragraph two of this decree mentioned and each of them, and their agents and servants from thereafter in any manner whatsoever placing the products of any of the factories owned by said defendants or said combination into the channels of interstate commerce, or such other relief shall be granted by the appointment of a receiver or otherwise as this Court may determine. 5475

4. That should the defendants find it impossible to perfect the details of said plan on or before the said 1st day of December, 1912, they may have leave to apply to the Court for further time to carry out said plan.

5. That until said plan is carried into operation and effect, the said twenty-seven defendants hereinbefore named in paragraph two of this decree, are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from doing any acts or act which shall in any wise further extend or enlarge the field of operations, or the power of the aforesaid combination.

5477 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the said twenty-seven (27) defendants, their officers, directors, servants, agents and employees be and they are hereby severally enjoined and restrained as follows:

5478 From continuing or carrying into further effect after said 1st day of December, 1912, the combination adjudged illegal in this suit, and from entering into or forming among themselves or with others any like combination or conspiracy by any method or device whatsoever, the effect of which is or will be to restrain interstate commerce in explosives or to renew the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein, in violation of an "Act to protect trade and commerce against unlawful Restraints and Monopolies," Approved July 2, 1890; and especially:

1. By causing the conveyance of the factories, plants, brands or business of either of said two new corporations to the other corporation or to E. I. du Pont de Nemours Powder Company or *vice versa* after the segregation of the properties among said corporations shall have taken place as herein provided; by placing the stocks of either of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any device;

2. By making any express or implied agreement or arrangement with one another or with others relative to the control or management of either of said corporations, or the price or terms of purchase, or of sale of explosives or relative to the purchase, sale, manufacture, or transportation of explosives which will have the effect of restraining interstate commerce; or by making any agreement or arrangement of any kind between said corporations under which trade or business is apportioned between said corporations in respect either to customers or localities.

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3. By offering or causing to be offered or making or causing to be made more favorable prices or terms of sale for the products manufactured by them or either of them to the customers of any rival manufacturer or manufacturers than they at the same time offer to make to their established trade, where the purpose is to unfairly cripple or drive out of business such rival manufacturer or manufacturers or otherwise unlawfully to restrain the trade and commerce of the United States in any of said products; provided, that no defendant is enjoined or restrained from making any price or prices in the sale of said products, or any thereof, to meet or to compete with prices made by any other defendant, or by any rival manufacturer; and provided further, that nothing in this decree shall be taken in any respect to enjoin or restrain fair, free and open competition.

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4. By either of said corporations retaining or employing the same clerical force or organization, or keeping the same office or offices as any other of said corporations.

5. By either of said corporations doing business

directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it, provided, however, that in case of a subsidiary corporation, the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer to bear also a statement indicating the fact of such control.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said defendants cancel and annul:

a. Agreement of October 2, 1902, between William Barclay Parsons, of the City of New York, and the Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1984.

b. Agreement of October 6, 1902, between H. deB. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1986.

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c. Agreement of the second day of October, 1902, between Schuyler L. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1988.

d. A like and identical agreement made about the same date between J. A. Haskell and the Delaware Securities Company, described in Petitioner's Testimony, Volume 2, page 1012.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during a period of five years from the date hereof each of said corporations, the E. I. du Pont de Nemours Powder Company and said other two corporations, their officers, directors, agents, serv-

ants and employes, be hereby enjoined and restrained as follows:

1. None of said corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said corporations shall employ the same agent or agents for the sale in interstate commerce of explosives which might be sold in competition with each other; provided that any one of said corporations may sell its products on commission through a merchant or dealer who is similarly employed by either or both of said other corporations. 5486

3. None of said corporations shall directly or indirectly acquire any stock in another of said corporations or purchase or acquire any of the factories, plants, brands or business of such other corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED 5487
that each and all of the individual defendants by this decree adjudged to be engaged in said combination while holding stock in said two corporations and E. I. du Pont de Nemours Powder Company or any two thereof, be enjoined and restrained from at any time within three years from the date hereof acquiring, owning or holding, directly or indirectly, any stock or any legal or equitable interest in any stock in either of said two corporations to which said properties shall be transferred in excess of the amount to which he may be entitled under the provisions of the plan herein mentioned when the same shall have been carried out as proposed; provided, however, that any of said individual defendants may notwithstanding this

prohibition acquire from any other or others of said defendants, or in case of death, from their estates, any of the stock held by such other defendant or defendants in said corporations, and may acquire their proportions of any increase of stock.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any new company or companies organized for the purpose of taking property under the provisions of this decree or otherwise, necessary to the carrying out of this plan, shall, after their formation and by appropriate proceedings, be made parties to this cause, and subject to the provisions of this decree and bound by the injunctions herein granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party hereto may make application to this court for such orders and directions as may be necessary or proper in relation to the carrying out of such plan and the provisions of this decree.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the twenty-seven (27) defendants hereinabove mentioner, do pay to the United States Government its costs in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction of this cause is retained by this court, for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the plan herein set forth.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that after the plan hereinabove mentioned shall have been carried into effect a report shall be made to this court for its approval, setting out the man-

ner in which said plan shall have been carried out.

(Signed) GEORGE GRAY,
 JOSEPH BUFFINGTON,
 JOHN B. McPHERSON,
(Certificate of Clerk affixed.)

Thompson, Plaintiff, rested.

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Thereupon the Defendants moved for a non-suit, which motion was overruled.

Thereupon the Defendants offered evidence as follows.

ELLIOTT S. RICE, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Button:

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Q. Mr. Rice, you have heretofore testified for the plaintiff in this case? A. Yes, sir.

Q. You were in charge for the du Pont Company of its Chicago office from what date—1883, was it? A. 1883.

Q. Down to what date? A. September 1st, 1905.

Q. And that office embraced in a general way what territory? A. During that time, Illinois, Iowa, the northern part of Missouri, Nebraska, portions of Colorado, Wyoming.

Q. Some time in 1903 were you aware of the establishment of the Buckeye Powder Company and its plant at Edwards, Illinois? A. Yes.

Q. Upon the establishment of that plant did you make any change in your methods of selling pow-

der under contract or otherwise? A. No, sir.

Q. Did you conduct your business any differently after that than you had theretofore? A. No, sir.

Q. Had you had contracts for the sale of powder for periods before that time? A. Yes, sir.

Q. What change did you make in 1903 upon the establishment of that plant in reference to prices for powder sold in your district, if any? A. There were no unusual changes made.

5495 Q. Did you during that year at any time establish a flat price of \$1.10 to all customers, regardless of quantity? A. We did not. No such price was established that I know of.

5496 Q. Upon your examination in this case you presented two lists of contracts, being a certain list showing the powder that had been sold under contract at certain periods, and another list showing renewals of those contracts, which I believe are in evidence as exhibits for the plaintiff. Those lists represent the prices that were actually received by the du Pont Company for the powder sold under those contracts during the period you were in charge of that office? A. They do.

Q. Were there any other rebates made outside of those indicated on those lists? A. There were not.

Q. What was the general basis of rebates; that is, what reason led to giving rebates under these contracts? (Objected to and objection overruled.) A. Rebates were quantity rebates; the rebate depended upon the quantity consumed by the operator.

Q. That is, if the operator bought a large amount of powder he got a larger rebate? A. Yes; a corresponding increase in rebate.

Q. Was there anything secret about that among the trade in your district? A. Not that I know of.

Q. And it was generally understood by the operators? A. There was no secret about it.

Q. During the time that you were in charge of that office were there various new companies that came into existence and built plants, from which powder was sold in parts of your territory? A. Yes, sir.

Q. First, was Mr. Waddell's plant the first one of these new plants to be built after, we will say, 1900, so far as you recollect? A. Well, there were a number building about that time. I don't know just which one was finished first. 5498

Q. We will take from 1903 to 1905. What other plants were built there besides the Buckeye plant? A. There was the United States, the Egyptian, the Miami, the Burton and the Buckeye and some others.

Q. Senior? A. Yes, sir; Senior.

Q. Can you give the locations of those plants? Take the Egyptian. Where was that located? A. In Southern Illinois. I don't remember just where it was located, but it was in southern Illinois.

Q. And the Senior? A. The Senior was down in Ohio. 5499

Q. And the United States? A. The United States was in the southern part of Illinois.

Q. And the Burton? A. The Burton I think was in Pennsylvania.

Q. Where was the new plant, the Miami? A. On the Mississippi River, the southern part of Illinois.

Q. During the period you were there were these companies actively bidding for trade in your district? A. Yes, sir; when they got to running.

Q. What effect did it have upon prices? A. Well, as the output of the mills increased, there was a dearth of trade and more or less of a struggle and some lowering of prices.

Q. During the time that you had charge of that

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Elliott S. Rice—Direct

office, after Mr. Waddell's appearance in the trade, were you familiar with all trade conditions in the powder business in that territory? A. I think I understood them pretty well. I tried to.

Q. Did you know of your own knowledge of the policy that was pursued by the du Pont Company in the sale of its powder during that period? A. I think so.

5501 Q. Were you competing with these various companies during that time, Mr. Rice? A. So far as I found it necessary, yes, sir.

Q. Now will you state whether any different method of competition prevailed in that district in reference to the Buckeye Powder Company than prevailed with reference to the Egyptian, the United States, the Senior, the Burton and these other companies while you were there? (Objected to and objection overruled.)

5502 Q. My question is not in reference to the difference in the period previous to Mr. Waddell's advent and subsequent but after Mr. Waddell came in and these other new companies came in whether there was any difference in the competitive treatment between Mr. Waddell's Company and the Senior and the Egyptian and the rest of them there in your district? A. There was not.

Q. Was any team or any system of competition indulged in your territory by you or anybody else directed principally against Mr. Waddell and his company? A. No.

Q. Were you in such a position that you necessarily would have known it if there had been? A. I certainly would have known it.

Q. And there was none such. Did you see any letters written by Mr. Waddell during this period, in reference to prices? A. Yes, sir.

Q. You testified in the Government proceedings,

did you, Mr. Rice? Do you recollect furnishing to the Commissioner as an exhibit in that case a letter which was signed by the Buckeye Powder Company? A. I do.

Q. Addressed to the Woodside Coal Company? Do you recollect who signed that letter? A. R. S. Waddell.

Q. In his handwriting? A. Yes, sir.

Q. Where did you get it? A. It was sent to me from my Springfield office.

Q. With a letter from the Springfield agent? 5504
A. Yes.

(Letter received in evidence and marked Defendant's Exhibit A-511.)

Mr. Button: This is on the letterhead of the Buckeye Powder Company:

"Peoria, Illinois, October 14, 1904.

Woodside Coal Company,
Springfield, Illinois.

Dear Sirs:

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In the run of our mills we make a proportion of CCC and CC grains which is subject to variation in quantity at will. We would be glad if you could arrange to absorb a few carloads of Buckeye powder which, under the circumstances, we offer to you at \$1.05 per keg in carloads of 800 kegs delivered at your mines. Terms sixty days or 2% off for cash ten days. We feel at liberty to make this quotation as the people who supply you, are selling a carload contract of ours who uses about 3,000 kegs per year, at this price and on the same terms. We, therefore, make the same tenders to

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their contract trade. Powder contracts seem to be on a par with coal contracts, subject to suspension during more favorable conditions. The quality of our powder is unexcelled and fully guaranteed. The capacity of our mills is 1,400 kegs per day.

Truly yours,

Buckeye Powder Company,
R. S. Waddell, President."

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Q. That was in October, 1904? Where was this Woodside Coal Company located? A. Near Springfield, Illinois.

Q. Can you tell in a general way how long the du Pont Company had been selling it powder? A. For a number of years; I don't know how long; I think from the time it opened.

Q. At this date was it under contract? A. It was.

Q. One of the contracts on this list you have produced? A. Yes.

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Q. What was the price, if you recollect without referring to the list? A. I think the net was \$1.15, but I cannot testify—

Q. The list will show? A. The list, the contract, will show.

Q. Did you see other letters of that general nature? A. Yes, sir.

Q. Have you any of them? A. I have not.

Q. Now, that letter states that the price was made because a similar price had been made to some large customer of the Buckeye Company. Had you made any such similar price to any such customer? A. No. I don't know, of course, what was referred to. I don't know of making any price of that kind to any customer of the Buckeye Company.

Q. Did you attend a meeting of this great American Handicap some time in Kansas City? A. Yes, sir.

Q. What was the date of that meeting? A. The first week in April, 1902.

Q. At that time, Mr. Rice, do you know whether the Indiana Powder Company had been sold out by Mr. Rood and his associates? A. I think it had, yes.

Q. Did you go to that meeting with a party of rifleman shooters? A. Shotgun shooters.

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Q. Was Mr. Waddell there? A. Yes, sir.

Q. You had known him for how long? (After a pause): Oh, give it approximately. A. Oh, 20 or 25 years. 20 years, I guess.

Q. Will you speak a little louder? A. I think about twenty years.

Q. Did he have a party of shooters there also at this handicap? A. Yes.

Q. Did you stay at the same hotel? A. Yes.

Q. Was that some distance from the ground at which the shooting was held? A. Yes; several miles.

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Q. Did you have any conversation with Mr. Waddell on that occasion? A. Yes.

Q. When was it and where? A. It was on the car between the grounds and the hotel.

Q. How did you happen to be with him on the car? A. Well, I left the grounds early in the day and as I was going towards the car, or towards the place where we took a car, Mr. Waddell called me and I waited for him and he put up his gun and went with me on the car; we sat together on the same seat.

Q. Will you now tell us what was said by him to you on that occasion in reference to going into the powder business, if anything? A. Mr. Waddell

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Elliott S. Rice—Direct

told me that he had recently been to Wilmington and met the then new president, whom I had not seen, Mr. T. C. du Pont. He complained of the situation as he found it there. He complained that he could not get instructions to meet prices and do other things that he ought to do in his territory, and he proposed to quit the employ of the company and invited me to quit with him and join him and get Mr. William McBlair of St. Louis to join us and build powder mills. There was a talk of building a mill in Indiana, one in Illinois and one in Indian Territory, or in that district. I objected to the powder mill business or going into the powder business, further than I already was interested in it, and declined to go into the manufacture of powder. He said we would not of necessity make very much powder. The plan was to make prices. I declined to go into it. During the conversation the Indiana Mill enterprise was spoken of and its sale, its advantageous sale, the advantages of the sale, Mr. Rood was spoken of as a former employee of his and as the man who organized the Indiana Company and was supposed to have made considerable money as the result of the enterprise—

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Q. Was anything said as to the result of this enterprise if you did go into it? A. Oh well, it was to make money, of course.

Q. Was anything said as to the manner in which that was to be accomplished? A. Nothing other than I have said, that I remember. I don't remember further.

Q. Who was Mr. McBlair? A. William McBlair was the agent of the du Pont Company at St. Louis. He had formerly been the agent of the Hazard Company and I guess represented both at that time.

Q. How long had he been agent in St. Louis,

approximately? A. I don't know, but a number of years—ten or fifteen years, I think. I could not state exactly, Mr. Button.

Q. Was that the end of it, when you refused to entertain the proposition? A. Yes.

Q. Was it never mentioned again to you at any time? A. I never saw him afterwards to talk to him, to any extent anyhow.

Cross examination by Mr. Abbott:

Q. You state you have known Mr. Waddell, or had known him, for some twenty years before this conversation occurred? A. I think so.

Q. When did you first make his acquaintance, under what circumstances? A. I think it was in Cincinnati in 1884 or 1885, while he was the agent of the Hazard Powder Company.

Q. Were you interested in that district at that time? A. I was sent there by my employer.

Q. Your territory took in Cincinnati, did it? A. No, it did not.

Q. Did you have any representative selling powder in Cincinnati at that time? A. I think not at that time.

Q. Well, how soon after that did you have some one representing you? A. I could not say as to that. I had no representative there; the company had one there.

Q. Well, what company do you mean? A. The du Pont Company.

Q. Who was that representative? A. George W. Schwartz.

Q. How long did he represent you there? A. I cannot state the time; I don't remember.

Q. Do you recall any circumstances which occurred at that time whereby you tried to make an

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Elliott S. Rice—Cross

arrangement with Mr. Schwartz for the purpose of getting Mr. Waddell to take certain steps which were contrary to the rules and regulations of the association for the purpose of getting him discharged?

A. No.

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Q. Do you remember whether there was an association at that time under whose direction the du Pont and Hazard Companies were acting? (Objection overruled.) A. I do not. I didn't know of any such association.

Q. Did you not write a letter to Mr. Schwartz about that time in which you specified a plan which he was to follow in order to entrap Mr. Waddell into taking steps which were contrary to the rules of the association? A. I did not.

Q. Shortly after that time did you not make a protest to the du Pont Powder Company against Mr. Waddell having anything to do with certain trade of yours in Indiana? A. I think I did object to his meddling at Fontanet, Indiana, where we had an office.

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Q. What particular trade was that? A. J. Smith Talley.

Q. Who was the other member of the firm? A. I think Mr. Tennant was at one time a partner.

Q. At that time was not Mr. Talley a customer of yours, purchasing du Pont powder, and was not Mr. Tennant a customer of Mr. Waddell's purchasing Hazard powder? Is not that correct? A. I don't think it is.

Q. Well, what were the facts, then, about that? A. I think the only one using powder at the mines of Talley was Talley himself, J. Smith Talley. They had a store there as an agency and a magazine which belonged to the company.

Q. What was done, then, with respect to the

request you made in regard to that customer? A. I don't remember what was done.

Q. Did not that affair of yours and Mr. Waddell's at that time lead to an unfriendly relation between you and him? A. I don't think so; no.

Q. Have your relations always been perfectly friendly? A. No.

Q. When did they become unfriendly? A. About the time I met Mr. Waddell first.

Q. And they have continued unfriendly, have they not, down to the present day? A. At times 5522
we have been friendly enough, but my first reason for disliking Mr. Waddell occurred at the time of our first meeting.

Q. And there has been an unfriendly relation between you from that time on down to the present time, has there not? A. I cannot say that we have not been friendly enough and worked together at times.

Q. Have you always worked together? A. Oh, no.

Q. Do you remember when he was general sales agent at Wilmington? A. Yes, sir.

Q. Do you remember when you refused to recog- 5523
nize him as general sales agent? A. Yes; I do.

Q. And you would not have any business through his office? A. No.

Q. What was the reason for that? A. I had no confidence in him whatever. I did not think he was there for the——

Q. State your reason, now——

Mr. Button: He is answering the question.

The Court: Yes; go ahead.

Q. All right; I am perfectly willing. A. In the first place, I called on Mr. Waddell in Cincinnati out of friendliness, to make his acquaintance and pay my respects, and during my visit and during

our conversation the Indiana trade matter came up and was discussed.

Q. What year was this? A. I think it was in 1885, but I cannot state positively as to the year or the time. He said that it would not make any difference, particularly, which man had the business or which office had the business, that he supposed I knew as a matter of fact that du Pont & Company owned the Hazard Powder Company and we were therefore representing practically the same interest. I told him if such was the case I didn't know it or had not known it, that I was in Chicago representing du Pont & Company, that I was competing in Chicago with the Hazard Powder Company, and if du Pont & Company owned the stock, as he stated, of the two companies, I didn't see why I was there with one interest. Being called to Wilmington a week or two later, I was taken to task by Mr. Henry du Pont for having made a statement to the effect that the du Pont Company owned or the E. I. du Pont de Nemours & Company owned every share of the Hazard Powder Company's stock. I told him very frankly that I had never made any such statement and had never heard it except at the Cincinnati office of the Hazard Powder Company. I concluded from what was said to me or told me about the matter at the time that that story was fabricated and sent to the office of the Hazard Powder Company and in turn sent to the du Pont Company for the purpose of injuring me, and therefore I had very little use for Mr. Waddell after that. I was in business with him as the business of the company required, but did not warm up to him to any extent.

Q. Is that the only reason for your unfriendliness to Mr. Waddell? A. I think that is all. That in my opinion was sufficient.

Q. That is the only ground you had for your unfriendly relations to Mr. Waddell. I want you to tell you know about that? A. I think you have got it all now.

Q. When was it you first related this conversation you say you had with Mr. Waddell at Kansas City in 1902? A. I first related that conversation on my return to Chicago.

Q. To whom did you relate it? A. My brother in the office there.

Q. Where is your brother? A. In Chicago.

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Q. Now? A. Yes.

Q. Did you relate it to anybody else? A. I don't think so; I don't remember.

Q. Did you relate it to your superiors? A. I did not.

Q. In Wilmington? A. I did not.

Q. When did you first tell that conversation to anybody else but your brother? A. I think at the Government hearing in New York.

Q. That was in 1909, when you gave that testimony in that case, was it not? A. Yes, I think it was.

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Q. And all that time you kept this information to yourself and did not give it to anybody except your brother? A. Yes.

Q. You knew, did you not, that Mr. Waddell about that time entered the employ of the du Pont Company at Wilmington, did you not? A. Yes, I recall that.

Q. If you had known that this particular fact was of such vital importance would you not have related it to your superiors at Wilmington? A. I did not and would not under the circumstances.

Q. So you let them go on and employ him knowing full well that he had made a statement that was very injurious to them? A. I did not repeat the statement to them.

Q. How many times did you see Mr. Waddell at this time where you were stopping together at Kansas City? A. I could not say as to that. Possibly half a dozen times.

Q. Did you have any talk with him during the time you were at the hotel? A. I don't know.

Q. What kind of a car was it you say this conversation occurred it? A. A passenger car.

Q. Was it a steam car or a street car? A. My recollection is it was a trolley car.

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Q. What kind of seats were they, were they cross seats or longside seats? A. Cross-wise in the car.

Q. Did he sit in the same seat with you? A. He did.

Q. Was the car a crowded one? A. I don't think it was.

Q. There was just an ordinary crowd of people coming and going and passing; is that right? A. At that time.

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Q. Can you give any reason why Mr. Waddell would have called you and asked you to wait for him in order to have a conversation with you about a matter of this character when you had met him at the hotel on a number of occasions and had had a very much better opportunity to see him than at that particular time; can you give any reason for that? A. You are assuming that we had a better opportunity.

Q. Very well. You saw him at the hotel from time to time? A. I saw him and knew he was there.

Q. And you say you had some conversation with him? A. Very little except passing the time of day.

Q. Was this first conversation you had with him of a friendly character? A. I know we had met from time to time.

Q. Then once in a while you did discuss matters in a friendly way? A. Yes, sir.

Q. Your enmity was not of such a character as to prevent your having conversations with each other? A. I did not let it interfere with my business.

Q. Did he ever before ask you to join in any kind of a business enterprise? A. Not that I recollect.

Q. Do you know a man by the name of Irby Bennett? A. Yes.

Q. Did you ever meet Irby Bennett in March, 1903? A. I cannot say as to that.

Q. Did you ever have a conversation with him? 5534
A. A good many.

Q. Was he in the powder business? A. No, sir.

Q. What was his business? A. He was connected with the Winchester Repeating Arms Company. He was in the ammunition business, the gun business.

Q. Do you know whether Mr. Bennett was one of the original subscribers to the stock of the Buckeye Powder Company? A. He told me he was not.

Q. You asked him about that, did you? A. Yes; I asked him when he was in my office one time.

Q. And you had a conversation with him in March, 1903, did you not? A. I don't know the date. 5535

Q. I will ask you to state whether or not you had a conversation with Mr. Bennett in March, 1903, March 14, 1903, in Chicago? A. I cannot state what time that conversation was—any time he was in the office.

Q. I will ask you to state whether or not at that time you did not say to Mr. Bennett that you advised him not to go into the Buckeye Powder Company? A. No.

Q. Did you not? A. No.

Q. Did you not say to Mr. Bennett at that time that the du Pont Powder Company would spend \$500,000 to put Mr. Waddell and the Buckeye Powder Company out of business? A. I have no recol-

lection of ever making any such statement to Irby Bennett or anyone else.

Q. You say you did not make any such statement as that, to Mr. Bennett? A. Yes.

Q. Do you know Mr. Robert Bruce? I will identify him a little further. I mean Mr. Robert Bruce of Bruce and Burdick, Joliet, Illinois. A. I do not know Mr. Bruce personally. I knew about the concern.

5537 Q. Did you ever meet Mr. Bruce in any manner? A. I do not think I did, and yet I may have done so.

Q. What was Mr. Bruce's business? A. My recollection is that they were in the stone quarry business.

Q. At what point? A. Any point near Joliet; I don't remember the names.

Q. Mr. Bruce, as a matter of fact, had to use black blasting powder and dynamite, did he not? A. I suppose he did.

5538 Q. He had a contract, did he not, on the Chicago Drainage Canal? A. I cannot say as to that.

Q. Do you not know that your office sold him a good deal at a time? A. I know they sold him some powder.

Q. And some dynamite, did they not? A. If you will state the time I will tell you.

Q. Well, I am asking you whether you ever sold him any powder or dynamite during the years from 1903 to 1908. A. I sold him powder and possibly dynamite, but I do not remember.

Q. Do you know as a matter of fact whether Bruce & Burdick became customers of the Buckeye Company at any time during that period? A. I don't know that.

Q. You do not know that at all? A. I don't remember. I don't remember whether they did or not.

Q. Do you recall having gone or having seen Mr. Bruce of Bruce & Burdick either at your office or at his office, and of informing him that unless he quit buying black blasting powder of the Buckeye Powder Company you would quit supplying him with dynamite?

Mr. Button: When was this?

Q. Any time between 1903 and 1908, did you make that statement? A. I did not.

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Q. Do you know whether or not he did afterwards begin buying dynamite and black blasting powder of you? A. I cannot say when he did or what he bought. He was a customer of the office as were many others during that time.

Q. Do you remember a conversation you had with Mr. Bruce early in 1904 in which you told Mr. Bruce that the du Pont Powder Company would spend hundreds of thousands of dollars, if necessary, to put Mr. Waddell and the Buckeye Powder Company out of business? A. I never made such a statement in my life.

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Q. You did not make such a statement? A. Neither to him or to anybody else.

Q. You swear to that positively? Do you know a man named Joe Woods? A. Yes.

Q. What, if any, relation did Mr. Woods sustain to your company or your office? A. He was in my office as a book-keeper and in charge of the traffic department.

Q. How long did he remain with you? A. He remained with me up to the time I gave up the office.

Q. And when was that? A. September 1st, 1905.

Q. Did he remain there after that to your knowledge? A. I think he is still there.

Q. I will ask you whether or not at any time during 1903 to 1908 Mr. Woods with your knowledge made a contract or made an arrangement with a clerk in the office of the Chicago, Burlington & Quincy Railroad Company at Chicago whereby that clerk was to extract a triplicate copy of each bill of lading that was made out by the agent at the Edwards office at Edwards, Illinois, of the C., B. & Q., showing consignments of Buckeye powder to its various customers; do you remember any such thing and do you remember whether any such triplicate copy or any information of that character was brought to you by Mr. Woods? A. No.

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Q. You say it never was. Did you ever get any information of that kind from any source whatever that you know of? A. I can scarcely answer that except by hearsay. I did hear of shipments.

Q. How did you get information of those shipments? A. I cannot say that I got information of the shipments. I heard of shipments being made from time to time.

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Q. How did you get information concerning them? A. I don't know, except by hearsay.

Q. Just hearsay? A. Customers speak of it——

Q. You did not know anything about how that information came to you? A. I was not interested in it.

Q. Do you not know as a matter of fact that you made reports from time to time to your Wilmington office giving information of that character? A. Such information as came to me I sent to the Wilmington office.

Q. Do you not know as a matter of fact that complaint was made to your office of the action of Mr. Woods, and that that matter was taken up by Mr. Puffer, who was in charge of the C., B. & Q. freight traffic department, and that this clerk was

discharged by reason of that complaint, when the facts were ascertained? A. I do not know of any such thing.

Q. Referring to Mr. McBlair, to whom you have referred, are you and he on friendly terms? A. Mr. McBlair is dead. We were on friendly terms.

Q. Were you always on friendly terms during his lifetime? A. Yes; so far as I know.

Q. In regard to the methods you had of making contracts in this district during the period that the Buckeye Powder Company was in business, you say that no change was made in your methods. You have already testified to a large number of contracts that you made during that period and those contracts are now in evidence here through your testimony. I will ask you to state now whether or not all of the contracts of which you gave a list at the time of giving your other testimony were not made in the years 1903 and 1904; is that true or not, according to your best recollection? A. I think the contracts, a list of which I gave you, were many of them renewals, they having been renewed from time to time. 5546

Q. You say they were renewals. How many of them were renewals? A. I cannot tell you. 5547

Q. Do you not know that only thirteen or fourteen of them were renewals according to the contracts which have been produced here? A. I don't know.

Q. You don't know as to that? A. No.

Q. Do you not know that 57 out of 100 of those contracts which you made a list of at this time were made in 1903, and that the balance of the 100 were made in 1904? A. I don't know as to the date of them.

Q. You don't know as to that? A. No.

Q. Now, then, what was the smallest amount of

powder that a customer could use and have the benefit of a contract? A. I think 1,200 kegs.

Q. How many consumers of black blasting powder in the State of Illinois in the year 1903 were there who used more than 1,200 kegs? A. I cannot state.

Q. Do you know how many coal operators there were in the State of Illinois at that time? A. I do not.

5549 Q. Do you know whether every coal operator in the State of Illinois used 1,200 kegs or not? A. I do not.

Q. Do you not know as a matter of fact that there were a great many that did not use 1,200 kegs? A. I don't think they did, but I don't know.

Q. Do you know what proportion of them would use 1,200 kegs? A. No.

5550 Q. As a matter of fact do you not know that almost every coal operator in the State of Illinois who used 1,200 kegs was under contract during that time and that you made contracts with them in 1903 and 1904? A. I had contracts with a good many.

Q. Yes. A. And had had for years.

Q. And you know, as a matter of fact, that almost every man in the State of Illinois, who was entitled to have a contract, was under contract with you at that time, do you not? A. With me or some one else.

Q. And by some one else whom do you mean? A. Other companies, competing companies.

Q. Who were the competing companies they were under contract with at that time? A. Laflin & Rand Powder Company, the American and the Miami Companies. There were many active companies in the field all seeking contracts.

Q. You had the most of them, did you not? A. I don't know as to that. The Laflin & Rand Company was owned by the du Pont Powder Company

at that time, was it not? A. I don't know what they owned. It was not my business to know.

Q. You say that the new plants which were built about this time were the United States—you gave the United States as one of them. What year was the United States built? A. I don't know.

Q. And the Egyptian. What year was that built? A. I cannot state the year. I only know that there—that they were in general competition about the same time.

Q. When was the Miami built? A. About that time. I think the Miami was built in 1903.

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Q. When was the Burton built? A. I cannot state.

Q. The Senior Powder Company; when was that built? A. I do not know.

Q. The fact of the matter is you do not know very much about it, except a general guess? A. I did not say it was a guess.

Q. You said you did not make any difference in the method which you used in endeavoring to get business from Mr. Waddell or the Buckeye Powder Company and the method you used in regard to other competing companies. Is that right? A. Yes, sir.

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Q. The same thing you did with him you did with the others? A. What we did is what we believed to be according to business methods, against the Buckeye powder the same as against the Egyptian or any other.

Q. One of the methods was to cut their price? A. No.

Q. Well, a lower price. You said you lowered prices. You said that on your direct examination. A. I said prices were lowered by the increase of the rebate as the parties were entitled to an increased rebate. We did not lower prices only as competition compelled it or overstock—

Q. But you did lower prices from time to time, did you not? A. You mean a general lowering of prices?

Q. I am asking you if you lowered prices from time to time? A. No.

Q. You did not lower prices at all, you kept at one price right along; is that right? A. There was no general reduction of prices.

5555 Q. I am asking you if you lowered prices; I am not asking you about a general reduction of prices. Did you lower the price in any case? A. Possibly, yes.

Q. In how many cases did you lower prices? Did you not lower the price in every case where you came in competition with somebody? A. No.

Q. You did not at all? A. No.

Q. If you did not, was it because the customer was under contract to you? A. No, sir.

5556 Q. You did not have to lower prices in his case, did you? A. We did not have to lower prices in any case or beyond the meaning of what became fixed prices.

Q. And how did they become fixed, who fixed them? A. They were fixed by the various companies. They were not fixed; they simply came about as accidents of trade, if you please. When the supply of powder was more than the requirements, people piled up stocks and prices were lowered somewhat.

Q. Then there was no difference in the method which you used to get business when these competing companies were in the field and the method you used to get business when there were no competing companies in the field; is that right? A. I have been in the powder business since 1878 and I do not know that I ever knew a year when there was not competition between mills.

Q. Then why did you say on your direct examination, in answer to Mr. Button, his question being, "What was the effect of competition on prices?", that prices were lower as the result of competition; why did you say that? A. I don't think Mr. Button's question was put in that way. I don't think your questions are——

Q. Very well. Will you state it just as you recollect it? Then the record will prove it? A. I understood him to ask, so far as I recollect, he asked if my methods were changed any to meet the conditions when the Buckeye Mill came into existence.

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Q. He did ask you that. I am not asking you now about that, but I am asking you what he asked you about what was the effect of the competition? A. The effect of competition generally is to lower prices somewhat.

Q. Somewhat? A. Yes.

Q. So now you think you must have lowered prices because competition must have lowered them; is that right? A. I say that there may have been a lowering of prices, but I cannot remember to what extent it was.

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Q. Do you not know, as a matter of fact, that whenever your men went out for the purpose of selling black blasting powder and you found that somebody else, as you thought, had made a price which was calculated to attract that trade away from you, that you would make a better price to attract that trade? A. No; I have no authority to do such a thing. The conditions were reported to Wilmington and instructions given as to how to handle that trade.

Q. Very well. Then did they give you any instructions to make prices to get the trade in individual cases? A. Possibly.

Q. In what cases? A. I don't know.

5560

Elliott S. Rice—Cross

Q. You don't know any at all? A. No, sir.

Q. Did they not, as a matter of fact, make prices to you in every case where you thought it was necessary to get the business, or did they not authorize you to make prices? A. I cannot say what instructions were given or what their policy was. I know my instructions were to go to the company to get instructions.

Q. Yes; you got the instructions? A. I probably did.

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Q. You said awhile ago, in answer to Mr. Button's examination, that you were familiar with the trade conditions at that time and familiar with the competitive conditions. A. I think I was.

Q. Then why is it you do not remember something about these matters of whether you had to lower prices in order to get business? A. Because the principal reason is it has been eight years since I have had any connection whatever with the sales of powder or the company's business. I don't know what is going on, and I have had no interest in the business and have received no information in regard to it for a long time.

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Q. Therefore, when you said you were familiar with conditions at that time you were simply guessing at it. Is that it? A. No.

Q. Then state to us now what it was you were familiar with at that time. A. I was familiar with the prices ruling in the district at the time, the general trade conditions, and my own affairs.

Q. You said you were also familiar with the policy of the du Ponts with regard to competitive matters at that time. You did not state what that policy was. I would like to have you now state what it was. A. I don't know that I made that statement.

Q. Very well; we do not seem to be able to agree

on what you have said. Will you state now whether you were familiar with the policy of the du Pont Powder Company with reference to competition conditions in the time you represented them in Chicago, from 1903 on? A. In my district?

Q. Yes. A. In my district I think I was.

Q. State what that policy was. A. The policy was to hold the business we had.

Q. Yes. A. Hold it as we would any other business, to get the best prices we could.

Q. To get the business at any price? A. No. I 5564
never knew of any such policy.

Q. But it was to get the business? A. It was to retain the business we had.

Q. If it was necessary to make a price you were to report that price to Wilmington, to the Wilmington office; is not that the fact? If a lower price was made you would report that to the Wilmington office, and you would get instructions? A. Possibly, if any instructions seemed necessary.

Q. Did you at any time ever make any trade reports yourself to Wilmington? A. No, I think not.

Q. Do you remember distinctly whether you did or did not? A. No, I cannot say as to that. I 5565
may have made some trade reports, where I knew of the conditions, as well as I could, in cases where I knew of the conditions.

Q. Do you remember Applegate & Lewis, who were in business near Peoria? A. I knew there was such a concern there.

Q. Did you ever have any business with them? A. I think only through the Peoria agent.

Q. Who was your Peoria agent? A. We had three agency arrangements there—that is my office had. One was with Charles J. Off & Company, one with Oakford & Fahnnestock, and with Dooley Brothers.

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Elliott S. Rice—Cross

Q. How long did they remain your agents? A. They were selling powder there at the time I left.

Q. Are Oakford and Fahnnestock still selling?

A. They were on September 1st, 1905, yes.

Q. You left there September 1st, 1905? A. Yes.

Q. Did you make any reports at any time concerning the business of Applegate & Lewis? A. I could not say.

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Q. I will show you a certain trade report here (referring to Plaintiff's Exhibit No. 76), and ask you to state whether or not you made that trade report? A. (After examination:) There is nothing by which I can identify it. It is a typewritten report.

Q. The fact that your name is there does not enable you to identify it? Is that any authority to you? A. There is nothing about this that would enable me to say that I ever saw that before.

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Q. It would not. Well, who has the right to send out a report under your name? A. I don't know who may have sent that. Possibly I did. I don't know. There is nothing about it that enables me to identify it.

Q. I show you Plaintiff's Exhibit No. 77 and ask you to look at it and state whether or not you know anything about that report. A. (After examination:) There is nothing about it that enables me to identify it.

Q. That is from your office, is it not? A. I think it evidently was, but as to who made it I don't know.

Q. I show you Plaintiff's Exhibit No. 147 and ask you to state whether or not you know anything about that report. A. (After examination:) You understand that I do not claim that I never saw them before, but I did not dictate them. There is nothing on there that enables me to identify them.

Q. I just wanted to know whether you knew anything about these. A. I presume those reports went from the sales department, but I don't know anything about them.

(Mr. Abbott read aloud to the Court and jury the exhibits referred to, Nos. 77 and 147.)

Q. So you know nothing about those reports, Mr. Rice? A. I don't remember anything about them. I may have known of them at the time but I have no recollection of them.

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Q. Do you remember in the Government case, Mr. Rice, that you gave testimony in which you said that practically all the trade in your district was tied up by contracts? A. No, I don't remember making such a statement.

Q. I will ask you, then, Mr. Rice, whether or not it is true that the trade of the du Pont Powder Company, so far as you know, was largely contracted for throughout the entire district which you had in your care? A. The trade we had was covered by contracts—

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Q. And it is not true that the larger part of the trade in black blasting powder in the districts under your control was under contract? A. I think that is right.

Redirect examination by Mr. Button:

Q. In referring to the trade under contract, were you referring to the trade of your company? A. I did not refer to anything else.

Q. You did not refer to the entire trade of the state? A. I know nothing about the entire trade of the State.

Q. Mr. McBlair died about when? A. I cannot give the date, I don't remember. It was some time after—

Q. You have been asked whether your relations with Mr. McBlair were friendly. Do you remember his giving you a banquet or dinner some time before his death? A. He invited me to a club dinner at his club.

Q. About when was that? A. It was some little time before I heard of his death; I don't know the time.

Q. Did you ever know of any one in your office in Chicago paying any money to this C. B. & Q. Railroad or his agents, or any other railroad or its agents for information; did you ever do it? A. No.

Q. Mr. Woods has been referred to. Is he still in Chicago, in that office? A. Yes.

Q. Subject to subpoena every day? A. I suppose so. He is an employe of the company.

Q. You were asked whether you disclosed to the du Pont officials when Mr. Waddell was taken to Wilmington as a general sales agent this conversation you had with Mr. Waddell in reference to building a mill or building various mills. I will ask you whether or not at the time you learned Mr. Waddell was to be transferred to Wilmington you took up the matter in some way with Mr. T. C. du Pont or some of the other officials? A. I was there two or three days going over the business of the company, but I did not understand at the time I left there that Mr. Waddell was coming to Wilmington at all. I would say, Mr. Button, I should not have repeated that to the officers of the company if I had known Mr. Waddell was coming.

Q. Did you say anything to them about the propriety or otherwise of giving Mr. Waddell that position? A. I objected to it, yes.

Q. To them? A. Yes, to Mr. T. C. du Pont.

Mr. Button: I think that is all.

Recross examination by Mr. Abbott:

Q. Will you state whether or not that is your signature (handing witness paper)? A. Yes, sir.

(The paper referred to was marked Plaintiff's Exhibit 1423 and read to the jury as follows):

Office of the
Austin Powder Co.,
34 South Water Street

5576

Cleveland, O., Feb. 6th, 1892.

Geo. W. Schwartz, Esq.,
Cincinnati, Ohio.

Dear Sir:—

Happening in Cleveland to-day and visiting our friends, the Austin, I am advised in a measure as to what occurred at recent meeting in New York, and in confidence I wish to give you a pointer or two and shall hope to hear from you from time to time should you learn anything that would assist me or others in fastening responsibility for future demoralization in powder prices at Cincinnati upon the parties actually at fault. The past troubles at Cincinnati were quite fully discussed at the meeting referred to, the responsibility for which was by one interest placed upon another, and by the interest so charged denied. Finally a motion offered by Mr. Eugene du Pont and seconded by Mr. Colvin, restoring prices absolutely, was carried. Under this resolution a Committee will be appointed by the Board of Trade. This Committee may be composed of parties not members of the Board of Trade. Its duties will be the investigation of all charges of infraction made hereafter. The Committee will report to the Board of Trade and that report being

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adverse to persons charged with infraction or violation of established rules, relating to the same, the Board shall take action pursuant to the provisions of certain sections in an agreement entered into under date of December 19th, 1889, which as I understand it will compel the withdrawal of agency charged with infraction, or the removal of the agent responsible for the trouble.

Now, then—First, you will have been advised to restore prices. You will have been ordered to maintain such prices, and your competitors having received like instructions there can be no question but that you will regain and can retain a trade heretofore favorable to yourself and du Pont Powder.

Second, You will retain that trade until inducements are offered that will take it from you. Watch carefully those in the wrong heretofore and it seems to me that we should soon be able to capture the guilty man.

I shall hope to see you at Chicago one week from to-day, when I will tell you further with reference to matters in which we are mutually interested.

Kindly regard the facts I give you in confidence, and believe me as ever,

Yours truly,

E. S. RICE.

Q. Now, Mr Rice, what was this meeting that you have referred to in this letter? A. I don't know; I don't remember; I don't remember any of the particulars of the letter.

Q. What was this board of trade that you had in mind in this letter? A. The subject matter of the letter was probably brought up at that meeting; and reported to me, and on the report to me I made the report to Mr. Schwartz.

Q. What was that board of trade? A. I don't know.

Q. What committee was that that was to be appointed by the board of trade? A. I don't remember anything about it.

Q. What was this agreement that is referred to here as being the agreement dated December 18, 1889? A. I don't know. I never saw the agreement.

Q. Was that the fundamental agreement? A. I don't know. I don't know anything about the fundamental agreement.

Q. You wrote this letter. Where did you get the information? A. Probably in the office of the Austin Powder Company. 5582

Q. Then you did know something about an agreement or an association there? A. I was told in the office there.

Q. Have you not as a matter of fact all the time known that there was an agreement in existence, you representing the du Pont Powder Company? A. Only from hearsay.

Q. But you did know it from hearsay, somebody told you, all the time? A. I don't know whether they told me all the time or not, but they evidently told me that. 5583

Q. Who was this other party that you referred to, in Cincinnati, as being at fault in these matters? A. I don't know.

Q. Was there any other person representing any company in Cincinnati except Mr. Waddell? A. Oh, yes; I think the King was represented and the Oriental.

Q. Which did you have in mind at that time? A. I don't know.

Q. You cannot tell? A. No.

Q. Do you know where this information about prices having been restored and orders having been given to maintain prices came from; can you tell that? A. From the Austin Powder Company, some of the officers of the Austin Powder Company.

Q. Who was it you had in mind when you said, "Watch carefully those in the wrong heretofore, and it seems to me we shall soon be able to capture the guilty man"? A. I don't know.

Q. As a matter of fact, was it not Mr. Waddell? A. I don't know.

Q. Was not the man you had in mind at that time Mr. Waddell? A. I cannot tell who I had in mind; I don't remember the letter even.

Q. You were the general sales agent at that time of the du Pont Powder Company in that district, or in charge of that— A. (Interposing): At Chicago.

Q. And you were supposed to know all about what was going on, were you not? A. Only as I was instructed from my own office.

Redirect examination by Mr. Button:

Q. Who was Mr. Schwartz? A. A man I employed in Chicago as a traveling salesman and recommended him to be employed at Cincinnati.

Q. Where did he have his office? Did he have an office? A. He had an office in Cincinnati.

Q. And this letter in 1892, some twenty years ago, was sent by you to him in Cincinnati? A. I presume so.

Q. Was his office with Mr. Waddell at that time? A. No; he had a separate office.

Q. Have you any idea where Mr. Waddell got this letter? A. I suppose he got it from Mr. Schwartz's files. He afterwards took the agency—

Mr. Abbott: We object to what he supposes. If he knows anything about it, all right.

The Court: Yes; let him state the facts.

Q. Do you know whether Mr. Schwartz's files

were turned over to Mr. Waddell's office? A. I only assume that they were.

Q. You do not know? A. No.

ALEC THRUSH, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Button: ..

Q. Where do you reside? A. Hanna City, Peoria County, Illinois. 5588

Q. How far is Hanna City from the City of Peoria? A. About twelve miles.

Q. How long have you lived in Hanna City? A. About 28 years.

Q. What is your business there, Mr. Thrush? A. Coal miner.

Q. Is that a coal mining community? A. Yes, sir.

Q. And has been during all the time that you have lived there? A. Yes, sir.

Q. Are you a miner yourself? A. Yes, sir.

Q. Have you been such during these entire 28 years? A. I have. 5589

Q. For what coal company are you now at work—Mr. Thrush? A. At present, the Clark Coal Company.

Q. What company were you working for in 1907? A. The Lewis & Applegate Company.

Q. The Applegate & Lewis Coal Company? A. Yes.

Q. Whose home address is Cuba, Illinois, if you recollect? A. Their home address I think is in Peoria.

Q. Is it the same concern—have you heard these trade reports just read here? A. It is the same company but operated in a different place.

Q. How long did you work for the Applegate &

Lewis Company? A. I worked for them probably four or five years.

Q. Beginning about when? A. I think about 1902. I think that was about the time that they took charge of this place. I am not positive of the dates.

Q. Did they take over a mine at that time which had previously been operated by some other people?

A. Yes, sir.

Q. Had you previously worked in that mine? A. Yes, sir.

Q. How long had that mine been operated before they took it over, if you know? A. I suspect that mine had been operated for thirty years, probably more.

Q. And when Applegate & Lewis took it over you went to work for them? A. Yes.

Q. And continued down through 1907? A. Yes, sir.

Q. When you first started in there what powder were they using? A. They were using du Pont powder.

Q. Did they use that for some years? A. They used it pretty near ever since the mine was sunk, I believe.

Q. Years previous to that time? A. Yes, sir.

Q. Was it well known in that community among the miners? A. Yes, sir.

Q. At some time did you get some Buckeye powder down there? A. Yes.

Q. Do you know when that first appeared in that mine? A. I am not positive as to the date when it first appeared.

Q. Who was Mr. Morton? A. Mr. Morton was a mine foreman.

Q. Robert Morton? A. Yes.

Q. And called Bob Morton generally? A. Bob Morton generally.

Q. Did he get the Buckeye powder down there?
A. I don't know whether he got it there or who got it there, but there was some Buckeye powder came in there.

Q. What was he, Morton, doing with it, if anything? A. It looked as though he was trying to introduce the powder in the mine.

Q. Was he advocating its use there? A. Yes, sir.

Q. Did he talk to you and others about it? A. Yes, sir.

Q. And at that time you were still using the du Pont, were you? A. Yes, sir. 5594

Q. On some occasion did you meet Mr. R. S. Waddell? A. Yes, sir.

Q. Can you remember when it was that you met him? A. Not exactly on the dates, but some time in 1907.

Q. Where did you meet him? A. I met him in the coal office at the mine.

Q. How did you happen to meet him there? A. I was called out of the mine on that occasion to meet somebody there, and when I came out Mr. Waddell was there. 5595

Q. Who called you out? A. Mr. Morton.

Q. You had been in the mine at that time? A. Yes, sir.

Q. At the time were you a member of the pit committee of that mine? A. Yes.

Q. A committee of three? A. Yes.

Q. Were you introduced to Mr. Waddell by Mr. Morton on that occasion? A. Yes.

Q. In the coal office? A. In the coal office.

Q. Did Mr. Morton stay there during your conversation? A. No, sir.

Q. He left you alone with Mr. Waddell? A. Yes.

Q. What did Mr. Waddell say to you? A. Well, he had some samples of powder along with him showing them there and wanted to introduce them

and get his powder established in the mines is possible, and wanted somebody to kind of look after the matter in a way, so he would have a fair show with the other powders.

Q. Did he propose any method of doing it, and if so, what? A. He wanted me to take the powder and use it in a practical way to see if we could not produce more good lump coal with his powder than what we could with the du Pont powder.

5597 Q. Did he make any proposal to you in that regard? A. Yes.

Q. What was it? A. He proposed to recompensate me for my trouble.

Q. How much was he going to pay you? A. He was going to pay me a dollar a day for looking after the business and furnish what powder I used free of charge.

Q. And was anything said as to what was to happen in case you got the powder established in the mine? A. Not at that conversation, there was not. There was later.

5598 Q. Where was the later conversation? A. It was in his office in Peoria.

Q. What was said in that regard at that time? A. That if we got the powder established there I was to get a commission on all powder that came in there.

Q. After it was established? A. Yes.

Q. How much commission were you to get then? A. I believe it was ten cents a keg.

Q. Going back to this first conversation that you had at the mine, in the office, did you agree to do this for Mr. Waddell? A. Yes.

Q. After that did you advocate the introduction of that powder in the mine? A. Yes; I did.

Q. Was there anything said at that conversation as to whether you should say anything about the

arrangement you had made with him? A. That was supposed to be a private conversation.

Q. Did you as a matter of fact disclose the fact that you had such an arrangement? A. No, sir.

Q. And you advocated the powder after that? A. Yes.

Q. Did Mr. Waddell pay you a dollar a day? A. Yes.

Q. For how long? A. I don't just recollect.

Q. Well, approximately. A. For two months, probably.

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Q. Where did you get your money? A. I got my money in his office.

Q. And was it on one of those occasions when you had the subsequent conversation as to the 10 per cent commission? A. Yes.

Q. Did you also get your powder free, according to the arrangement? A. Yes.

Q. Just how do the miners get powder? Do they come up and ask somebody for it? A. No, sir. There is what we call a powder check, and a man's name, and a number that his tonnage goes on is on this powder check. Also his place, his room or his entry, or the different entry that he may be at work on in the mine is on this powder check, and it is all signed up in the office; as if I worked on the north entry of the tenth room and my check number, to show my tonnage of coal each day, would be No. 8, why, my name would be signed to the same card, and then the powder is delivered that night when the electricity is all out of the mine or when the power is out, to these different places, to avoid accidents.

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Q. How does the miner pay for his powder? When he comes to get his wages is it deducted according to these checks, from his wages? A. Yes, sir. He gets a statement with all the expenses about the mine deducted from his wages.

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Alec Thrush—Direct

Q. When you came to settle was there anything deducted for the Buckeye powder you had used during this period? A. No.

Q. Did Mr. Morton know about your not paying for your powder? A. He must have known about it; he had charge of the business there.

Q. Did he have charge of checking up these slips? A. Yes, sir.

Q. And these powder checks? A. Yes, sir.

5603

Q. Now, then, did you succeed in getting some of these miners to use Buckeye powder? A. Yes, sir.

Q. So far as they went, what results did they get as compared with the former use of the du Pont powder?

Mr. Abbott: Wait a minute——

Mr. Button: If you know.

Mr. Abbott: Yes.

By Mr. Button:

5604

Q. That is, from your personal knowledge; did you see the results they got? A. Yes.

Q. Now, I want you to state what result they got as compared with the use of the du Pont powder.

Mr. Abbott: One minute. Let me interrogate the witness.

By Mr. Abbott:

Q. Did you check up these results yourself? A. No, sir; I did not check them up.

Q. How did you personally know of the results? A. From the powder I handled myself.

Q. But I am speaking now of these other men that the counsel is inquiring about. A. From statements at the end of each day; they would show the

results and how much powder they used to get the coal they got.

Q. Did you know anything about those statements? A. I inquired about it.

Q. Did you see them yourself? A. I saw them myself from various mines, the ones I had particular charge over, to try to get the powder introduced into the mines. (Objection and argument.)

By Mr. Button: I will develop it a little further.

5606

By Mr. Button:

Q. You were there, then, to introduce the Buckeye powder? A. Yes, sir.

Q. And went around and got some of these other miners to make a trial? A. Yes, sir.

Q. After they had taken the powder and tried it in their shots, did you take the pains to find out what the results were? A. Yes, sir.

Q. What were they? A. Most of them were not very good results.

5607

Q. How did you find out the results; did you go into the rooms? A. I went into the rooms where the powder was used.

Q. Did you examine the slips and checks sent up from the results of their blasting? A. Yes, sir.

Q. What results did those miners get as compared with the former du Pont powder? A. They did not get as good results from the Buckeye powder as they did from the du Pont powder. For instance, on the solid shooting in that mine we used to get, well we would average from 12 probably to 16 or 18 or 20 tons a hole with a keg of powder, and they reduced the tonnage, the miners did—it reduced their tonnage there to about 9 to

5608

Alec Thrush—Direct

12 tons. Therefore they objected to using the powder.

Q. Did that finally result in a month or two in some official test being made in the mines? A. Yes, sir.

Q. Was Mr. Robert Morton connected with that test? A. Yes, sir.

5609

Q. What did he have to do with it? A. Well, he seemed to be managing the Buckeye powder at that test at that time, and at those tests we had a special committee that attends to those special tests, and we have what we call a powder commission, that is connected with the coal operators' association and with the United Mine Workers' Association, and this powder commission is the one that decides and settles the question of the test after it has been tried. They take the evidence and the figures and show up which grade of powder produces the most tonnage with the least slack.

5610

Q. In this case, as this test progressed, do you remember that Mr. Morton made some objection to the way the du Pont powder was used there? A. I understood he did. I was not there.

Q. Who had charge of the immediate test there in the mine, what committee? A. I don't know which committee; I don't know who the committee was that was put on that test.

Q. You have spoken of this powder commission. Is that a commission that is connected with the particular mine? A. No, sir; it is connected with the State.

Q. That is, connected with the State organization? A. Appointed by the coal operators' organization on the one hand, and the miners' organization on the other? A. Yes, sir.

Q. Do they always go around to the miners where there has been a test? A. They are always called in when it comes to a decision of a test of that kind.

Q. Of what kind? A. Where it comes to a decision or a test of powder, whether it is the quality of powder that should be used in that particular coal or not.

Q. In that case, did this commission come down there to pass on this test? A. They passed on the test; they did not come down——

Q. Who were the members of the commission at that time? A. I believe John H. Walker for the United Mine Workers' organization, and Mr. Jestie, for the operators.

5612

Q. Where did they have their hearing, if you know? A. They had their hearing in Peoria.

Q. Do you know what decision they promulgated there as to what should be done in the mine? A. The decision that we got back there——

Mr. Abbott: Wait a minute. Do you know yourself what decision was they promulgated? You can say yes or no to that.

The Witness: I cannot say yes or no——

By the Court:

5613

Q. The point is whether you got it from the commission or it was brought to you from somebody else. Which was it? A. Well, as a rule a committeeman or a member of either organization, unless he is right with the test, that is, with the commission, connected with them in the decision, always gets it handed down to him some way——

Q. You do not seem to understand the point. How did the word get to you of the result of the decision? A. It came officially through the organization.

Q. Which organization? A. The United Mine Workers.

5614

*Alec Thrush—Direct**By Mr. Button:*

Q. Was there a decision? A. There was a decision, yes.

Q. After that decision what powder was used in that mine? A. Du Pont powder.

Cross examination by Mr. Abbott:

5615 Q. You are acquainted with a man by the name of David Thrush, are you? A. Yes.

Q. What relation did he sustain to you? A. There is one David Thrush who is a brother of mine.

Q. Do you know the David Thrush that works in the Hanna City mine and lives in Hanna City? A. Yes, sir.

Q. Is he a brother of yours? A. No, he is my son.

5616 Q. There is another David Thrush in Hanna City, is there? A. No, he is not at Hanna City. You did not ask me if he was located there in the first place.

Q. Have you a brother named David Thrush? A. Yes, sir.

Q. Where is he? A. At Farmington.

Q. Does he work for the Applegate & Lewis Company? A. No, sir.

Q. Did he ever work there? A. Not for that company.

Q. When was it he worked in those mines? A. He worked in those mines probably fifteen years ago.

Q. This David Thrush that lives in Hanna City, do you know whether he ever had any relations with the du Pont Company at any time? A. I don't think he had.

Q. Do you know of any testimony that he has given in this case? (Objection overruled.) A. I think that he was called to Peoria in regard to this case, but I do not know anything in regard to his testimony.

Q. I will pass that for a moment. When was it you had this arrangement with Mr. Waddell to represent the Buckeye Powder Company in the mines? A. I cannot say just the date, but it was some time in 1907, I think.

Q. You are sure it was in 1907, are you? A. 5618
I think that is about the time.

Q. What part of the year was it, the first or the last part? A. I couldn't tell you, I could not say as to that. I think that it was along probably in June or July, or some time about that time. I am not certain as to that.

Q. How long were you in the employ of the Buckeye Powder Company? A. I think about two months.

Q. And then after that time did you at any time enter their employ? A. No, sir.

Q. That ended it? A. That ended it.

5619

Q. Do you remember the occasion when you presented your final bill for your services of having a conversation with Mr. Waddell? A. Well, I think I had a little conversation with him at the time.

Q. Yes. Well, what was that conversation you had at that time? A. I told Mr. Waddell at that time that I did not think it was worth while to go farther with the work, because the powder was not giving satisfaction to the miners in that mine and I felt that it was my duty to go to him and tell him that I could not do anything more for him in regard to getting the powder into the mines.

Q. Now, did you not state to Mr. Waddell at

5620

Alec Thrush—Cross

that time that another one of the Thrushes was at that time under contract with Dooley Brothers to see what the du Pont powder was kept in that mine and that Buckeye powder was excluded, and that he was getting \$50 a month for that service, and that if Mr. Waddell would make the same arrangement with you that you would make an arrangement with this Mr. Thrush so that you would get one-half of Buckeye powder used in the mine and the other half would be du Pont powder? Did you not make that statement? A. I never made no such statement.

5621

Q. And did not Mr. Waddell say to you that he would not countenance that sort of a deal in any way and that he would no longer have any use for you and would not keep you in his employ?

A. I want to tell your Honor that there was no such conversation between me and Mr. Waddell.

Q. And you are absolutely sure that nothing of that kind happened? A. Yes, sir.

5622

Q. I will ask you to look at that paper and state whether you know whose signature that is (handing witness paper)? A. (After examination) That is my signature.

(Paper marked Plaintiff's Exhibit for identification 1421.)

Q. How was that commission that you were telling about awhile ago constituted? A. How was it constituted?

Q. When was that commission first organized; do you know? A. I do not exactly know, but it has been probably organized I think for seven or eight years.

Q. Are you sure that that commission was organized previous to 1908? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Do you not know as a matter of fact that previous to 1910 there was no such commission as you have referred to, but there was a committee that had charge of overseeing these final contests between miners regarding powder, and that that committee was a different affair from this commission that you have in mind? A. No; I understand it to be the same thing.

Q. You understand it to be the same thing? A. Yes, sir.

Q. And this man Walker you say was a member of that commission? A. Yes, sir.

5624

Q. Do you remember when Mr. Walker came to the mine for the purpose of considering the question of this test that had gone on, that some question was asked him by Mr. Morton as to whether he had ever used any Buckeye Powder? A. No, sir; I do not remember.

Q. And do you not remember that Mr. Walker replied to Mr. Morton that the powder was not any good and that he would as leave sit on a keg of it and have it blown up; and did not Mr. Morton say to one of the men nearby, "Bring out a keg and touch it off under Mr. Walker"? A. No, sir; I never heard no such conversation.

5625

Q. Who was present of the miners' union of the State of Illinois at that time? A. Mr. Walker.

Q. Did you yourself have any experience in the shooting of Buckeye powder? A. Yes, sir.

Q. Did you see these men when they used Buckeye powder? That is to say, did you see how they bored their holes and fired their shots and so on? A. Yes.

Q. That was part of your duty, to see that, was it not? A. Yes.

Q. Was not that the only part of your business for the purpose of introducing the powder in that

way, explaining how it was to be shot, and so forth? A. Yes, sir.

Q. What results did you yourself obtain—good results? A. Yes, I obtained good results from the powder I shot.

Q. And so reported to Mr. Waddell? A. Yes.

Q. Do you know of any reason why the others should not have obtained as good results as you did? A. I do not think they took the pains to get their shot in proper condition before it was used, with that or with any other powder.

5627

Q. These men, then, simply did not know how to handle powder; is that right? A. They simply did not seem to want powder to do the work in the place of doing it themselves with their picks.

Q. Then that was not the fault of the powder? A. No, but they seemed to get the result from the du Pont powder without picks.

Q. Oh, yes, that would go anyhow. But you got results with it? A. I got good results from the powder I used as long as I had a uniform grade of powder.

5628

Q. How many kegs of powder did you use in making your demonstration? Do you recollect that? A. I don't recollect how many kegs of powder I used.

Q. I show you another document and ask you to state whether or not you know anything about that? A. (After examination) Yes, sir.

Q. Did you ever see it before? A. Yes.

Q. Do you know whom you gave it to? A. I am not positive now whom I gave it to.

Q. Is that your handwriting on there? A. No, sir.

Q. Do you know whose it is? A. No, sir.

(Paper referred to marked for identification Plaintiff's Exhibit 1422, as follows:)

STATEMENT OF ACCOUNT.

Hanna, Ill., 190 .

A Thrush & Son,

APPLEGATE & LEWIS COAL CO.

For Pay ending Oct. 31, 1906.

Cars	Tons	Price.
Yds. Entry		
C. C. Yds.		
Slips		5630
Rooms		
Days		
	Credits.	
Pow. 7	12.25	
Oil	We have charged this amount up to your account as the Buck-eye Powder Co. refuses to stand it.	
Smith		
Coal		
SS.		
Cash		
Rent		
Fuse		
Paper		5631
Dues	D'fts. ex. A-5-12	
Per ct.	For identification.	
C.W.		
Levy Fines		

Q. You talk about Mr. Morton taking some interest in this matter of getting Buckeye powder introduced. Is it not the duty of an operator, where a man is trying to make a change in his powder, is it not the duty of the superintendent to represent the owner of the mine; is not that correct? A. Yes.

Q. And Mr. Morton was representing the owner of the mine, was he not, in endeavoring to get Buck-eye powder introduced? A. Yes, I think so.

5632

Alec Thrush—Redirect

Q. So there was nothing wrong in his representing Buckeye powder, was there? A. I don't think there was.

Q. Was there anybody present, Mr. Thrush, at the time when you had this final conversation you have referred to with Mr. Waddell? A. No, sir.

Q. There was no one present? A. No, except Mr. Waddell and myself.

Q. Were you paid by cash or were you paid by check? A. By cash.

5633

Q. Who handed you the money? A. Mr. Waddell.

Q. Personally? A. Yes.

Re-direct examination by Mr. Button:

Q. At the time you ended this arrangement with Mr. Waddell was there some Buckeye powder which you had previously used which had not been allowed on your wages? A. Yes.

Q. How much? A. There is my statement there, the last statement as shown, as to the amount due me. I have not been paid that.

5634

Q. \$12.25? A. \$12.25.

Q. Is this a statement rendered to you for that bill by Applegate & Lewis? A. It was a statement that was rendered to Mr. Waddell, I never had it.

Q. Who is A. Thrush & Son; is that yourself and son? A. Yes.

Q. Was your son connected with you as a miner in this mine? A. He worked with me in the mine.

Q. After this arrangement you had with Mr. Waddell was broken off did Mr. Waddell refuse to allow this \$12.25 which had not yet been credited on your wages? A. He did not refuse to allow it, but it appears as though the coal company had refused to give me credit for it.

Q. That is, after the arrangement was brought to an end, did you endeavor to have this \$12.25 allowed you? A. Yes.

Q. Instead of that what happened? A. Mr. Waddell paid for it finally, and that is his receipt from the coal company and not mine.

Q. For how long would this \$12.25 worth of powder last you in the general run of things? A. I suppose probably that would have lasted two weeks; I don't know.

Q. Was this \$12.25 finally allowed you by somebody? A. It was allowed me by Mr. Waddell.

Q. He paid you how? A. He paid that in a check.

5636

Q. Do you know whether this is the ordinary bill form of the Applegate & Lewis Company? A. Yes, sir.

Q. In use at that time? A. That is the form of the payroll bill in use at that time.

Mr. Button: I offer this in evidence.

Mr. Abbott: We do not object.

(Paper referred to was marked Defendant's Exhibit A-512).

Q. Were these miners whose operations you have described the ordinary run of miners in the town and in the mining field? A. Yes, sir.

5637

Re-cross examination by Mr. Abbott:

Q. This allowance in which you say there was some difference between you and Mr. Waddell was a matter that came up after you had ceased representing him, was it not? A. Yes, sir.

Q. Did not Mr. Waddell contend that that should not be allowed by Applegate & Lewis because of the fact that your relations had ceased; was not that his contention? A. I don't know what his intention was.

Q. That was the reason? A. I know it was some time afterwards before I got my pay.

Q. And there was no contention on Mr. Wad-

Charles B. Spicer—Direct

5638

dell's part so far as you know or as you now recall, was there? A. (Interrupting) No.

Q. That this was not proper to have been allowed if it had been allowed to you during the time you were in his employ? A. No, sir; Mr. Waddell thought I ought to have had it while I was in his employ.

5639

CHARLES B. SPICER, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. Pittsburgh, Kansas.

Q. In 1905 were you in the employ of the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. In what capacity? A. Traveling salesman.

Q. Traveling through what territory? A. Southern Illinois mostly.

5640

Q. Where were your headquarters? A. St. Louis.

Q. You reported to the St. Louis office? A. Yes, sir.

Q. Were you present last August, 1913, on an occasion in Kansas City when certain testimony was given by certain miners or people who purported to be miners at one time connected with the Great Northern Fuel Company at Novinger, Missouri? Were you present when that testimony was given last August? A. Yes, sir.

Q. Do you recollect Mr. Kelly, Mr. Hess, Mr. Stevens and Mr. Rutherford testifying in your presence on that occasion? A. Yes, sir.

Q. Do you recollect that one or two of them purported to identify you as a man who had been at Novinger in 1905? A. Yes, sir.

Q. Had you ever seen any one of those four men before that day? A. No, sir.

Q. Are you sure of that? A. I feel certain of that, yes.

Q. You heard their testimony? A. Yes, sir.

Q. In 1905 did you in any way come in contact with the affairs or powder trade of this Great Northern Fuel Company at Novinger? A. Yes, sir.

Q. Where is Novinger located? A. Novinger is located on what is called the O. K. road. I think it is the Omaha, Kansas City & Western, or at any rate Omaha and Kansas City come in and they call it the O. K. road. 5642

Q. Were you in Novinger at all in 1905? A. No, sir.

Q. What part of the State is that in—the northern part? A. The central northern part, yes.

Q. Is it an extensive coal field up there? A. There are several coal mines there.

Q. What two important mines are there, or comparatively large mines, near this Great Northern Fuel Company's mine? A. Well, in the same general territory or locality as the Kansas Midland Coal & Mining Company, and the Rumbaugh Coal Company. 5643

Q. Do you know approximately what prices the du Pont Company was charging those concerns in the spring and summer of 1905?

Mr. Abbott: We object unless the witness personally knows this from actual information of his own. Perhaps I can ask the witness a question or two.

By Mr. Abbott:

Q. Did you make these prices yourself, Mr. Spicer?

5644

Charles B. Spicer—Direct

Mr. Button: Wait a minute. I asked him if he knew it.

The Court: On the question of knowledge I will allow cross examination.

A. Did I make prices?

Q. Yes. A. How do you mean?

Q. Did you have authority to make prices with any of the customers, of black blasting powder, or did you have to get it from somebody else? A. I
5645 had authority to quote the prevailing price.

Q. You yourself quoted these prices which you say that you made without having to especially ask for them from the du Pont Company? A. I had a general knowledge of what the prices were in Northern Missouri at this time.

Q. Where did you get that general knowledge? A. Just as any one would get it in the regular course of business. I knew what prices were in southern Illinois and in a general way in Missouri.

Q. Tell us how you got that? A. Well, there were certain established list prices.
5646

Q. Who established those lists? A. They were established by the du Pont Powder Company.

Q. When did they have an established list, according to your knowledge, first? A. I could not recall just when they started to have an established list price, from which rebates were given, according to the quantity of the powder that was consumed or purchased by the coal companies.

Q. Did that list obtain during the whole time you were representing the du Pont Powder Company, from 1903 to 1908? A. I will not say it obtained all the way from 1903 to 1908; I do not recall just when it was established or when it was discontinued.

Q. Do you not recall that it did not obtain until

1907? A. No, I do not think it was established that late.

Q. Then tell us again just all the information you have upon which you base your knowledge of the prices made by the du Pont Powder Company at that time? A. I had the information that anyone would get from the fact of being employed in the powder business.

Q. You have said that before, but we want definite information as to where you got that information. Did you get it from the du Pont Powder Company? A. Certainly. 5648

Q. You got it from the du Pont Powder Company? A. I got it from the agent of the du Pont Powder Company.

Q. What was he? A. W. H. Waters.

Q. Where was he located? A. At St. Louis.

Q. Was this information in writing from time to time given to you? A. Possibly so.

Q. You say possibly? A. Yes, possibly.

Q. You must remember that we do not know all about this and we want definitely where you got your information. A. Well, I would naturally get my information from the agent representing the company, who at that time was Mr. Waters. 5649

By Mr. Button:

Q. Mr. Spicer, you traveled this country and from time to time called on customers, did you not? A. Yes, sir.

Q. Did you have access to the files of the St. Louis office showing the prices of du Pont powder charged to the people through that district? A. Yes.

Q. Did you at that time know from those sources what was being charged to those concerns? A. At that time I was very familiar with it, yes.

5650

Charles B. Spicer—Direct

Q. And you got your information from the St. Louis office? A. Yes.

Q. Now can you state what in 1905, in the spring and summer, the prices were the Rumbaugh and the Kansas City Midland Companies had? A. According to my best recollection it was about \$1.10.

Mr. Abbott: I object to that.

The Court: Yes, unless you know.

5651

A. I feel certain the price was \$1.10.

Q. Who was Mr. I. B. Grant? A. Mr. I. B. Grant was superintendent of the Great Northern Fuel Company.

Q. This concern at Novinger? A. Yes, sir.

Q. Do you recollect meeting Mr. Grant in June, 1905, or thereabouts, some place? A. Yes.

Q. Where did you meet him? A. I met him in Kansas City.

Q. Was that the first you had to do with the powder business of the Great Northern Fuel Company?

5652

A. Yes, as near as I recollect.

Q. What occasion was this meeting with Mr. Grant? A. There was a meeting in Kansas City of the Coal Operators' Association, all members of the Coal Operators' Association, and I went up to Kansas City knowing that at that meeting I would come in contact with a number of coal operators, members of the Association.

Q. Did you go up to meet Mr. Grant purposely? A. I met Mr. Grant there.

Q. Was that your object? A. No; I won't say that I went there purposely to meet Mr. Grant. I went there to attend this conference, knowing that I would meet a number of coal operators.

Q. And among others you met Mr. Grant? A. Yes.

Q. Did you talk with them about powder? A. Yes, sir.

Q. What was that conversation? A. Well, I inquired as to the powder proposition in his mine and solicited the business.

Q. What did he do? A. He told me that they were not in shape at that time to transact any business with us, but he felt they probably would be about the 1st of September.

Q. This was what year? A. 1905.

5654

Q. Did you follow that information of Mr. Grant up later in the summer? A. Yes.

Q. About what time did you take it up again? A. I think along in August I wrote a letter and addressed it to Kansas City, referring—

Q. To whom did you write the letter? A. Either to Mr. Grant or Mr. McCaull, the president of the company.

Q. Had you done anything whatsoever about that business between this interview with Mr. Grant and the time you wrote the letter in the latter part of August? A. No, sir.

5655

Q. You did nothing between June and August on that business? A. No, sir.

Q. Did you dictate the letter to Mr. McCaull? A. Yes, sir.

Q. I show you a document and ask you what it is?

Mr. Abbott: Do not let him say what it is. If he knows anything about the document let him identify it.

The Witness: I can identify that document.

Mr. Abbott: Do not say what it is.

Mr. Button: I asked him if he knew what it was.

5656

Charles B. Spicer—Direct

Q. Did you dictate it? A. Yes, sir.

Q. What did you do with it? A. I dictated it to the stenographer and it came back to me and I passed it in to Mr. Waters for his signature, he being the general agent of the company.

Q. What happened to the letter then, to your knowledge? A. Naturally it would be mailed.

Mr. Abbott: You say "naturally." Do you know that?

5657

The Witness: It must have been, yes, sir.

Mr. Abbott: Do you know it was mailed?

The Witness: I did not put it in the box, Mr. Abbott, no.

By Mr. Button:

Q. Is this a carbon copy of that letter? A. Yes, sir; a carbon copy of a letter that was put through our office in the regular course of business.

5658

Mr. Button: I offer this letter in evidence.

Mr. Graham: What is the date?

Mr. Button: August 17, 1905.

Mr. Abbott (after examination): No objection.

(The letter referred to was marked Defendant's Exhibit A-513, and read to the jury as follows):

St. Louis, Mo., Aug. 17th/05.

Mr. W. S. McCaull,
563 Sheidley Bldg.,
Kansas City, Mo.

Dear Sir:

Our representative, Mr. C. B. Spicer, met your superintendent, Mr. Grant, at Kansas City, during

Charles B. Spicer—Direct

5659

June, at the time of the Coal Operators' meeting, and discussed with him the subject of powder. He understood that your company would be ready to enter into a new contract about the first of September. We will be pleased to figure with you on a contract for your supplies for the coming year, and can arrange to have our Mr. Spicer see you at Kansas City or wherever you suggest.

If you will kindly let us know at your earliest convenience what time he can arrange to see you, we will then send Mr. Spicer to you prepared to close a contract. 5660

Thanking you in advance for an early reply, we beg to remain,

Yours very truly,

E. I. DU PONT COMPANY,
W. General Agent.

S/.H

Q. At this time, Mr. Spicer, was the du Pont powder, the union powder? (Objection overruled.) A. 5661
No, sir; it was not.

Q. Was the Buckeye powder a union powder? A.
Yes.

Q. You testified this morning, as I recollect, that you ran across Mr. Grant in June, 1905, and that he had stated that they could not do any business or make any contracts until September and then you wrote this letter, following it up in August—August, 17? After sending this letter to Mr. McCaull, did you immediately go to Kansas City and see him? A. Yes, sir.

Q. Where did you see him in Kansas City? A. I saw him in his office in Kansas City. Q. Did he run his affairs from that office in connection with this Great Northern Fuel Company? A. Yes, sir.

5662

Charles B. Spicer—Direct

Q. Can you state about how long after August 17, when you wrote this letter, when that interview was? A. I think it was the following day.

Q. Had you received from Mr. McCaull an answer to this letter at the time you went to Kansas City? A. Not at the time I left St. Louis, no, sir.

Q. You saw Mr. McCaull, and did you discuss with him at that time the proposition of selling the powder to the Great Northern Fuel Company? A. Yes, I did.

5663

Q. When you went there were you aware that the Buckeye Powder Company had a contract with the Great Northern? A. No, sir.

Q. Now will you state that interview, what occurred? A. Well, when I talked to Mr. McCaull about powder he replied that the Buckeye Powder Company had a representative in the Novinger field who visited the mines and agitated the question of union label, and that the Buckeye Powder had a union label, and because of this he had been compelled to close a contract with the Buckeye Powder Company; and he further told me that he had written me the day previous along that line.

5664

Q. Did he say the date on which he had been compelled to make this contract with the Buckeye Powder Company? A. I don't recall that he did, no sir. It was previous to my visit at that time.

Q. Did he state any more particulars about what had been done by the Buckeye representative there in getting that contract? A. Well, I don't recall that he stated anything other than that this Buckeye representative told them of its being a union powder.

Q. Did you then go back to your St. Louis office? A. Yes.

Q. When you got there did you find the letter from Mr. McCall which you say he had written you? A. Yes.

Charles B. Spicer—Direct

5665

Q. Are you familiar with his signature? A. Yes.

Q. I show you A-372 for identification and ask you if that is Mr. McCaull's signature? A. (After examination.) Yes.

Q. Is that the letter you found the next day when you got back to your St. Louis office? A. Yes, sir.

(Defendants' Exhibit A-372 read to the jury as follows):

Kansas City, Mo., August 18, 1905. 5666

Mr. W. H. Watters,
Gen. Agent, du Pont Powder Co.,
St. Louis, Mo.

Dear Sir:

I have your favor of the 17th inst. concerning the supplying of powder to our mines at Novinger, Mo., and in reply beg to say that owing to action of the Miners' Union, your powder was boycotted and we were compelled to sign a contract for another brand of powder. Would be pleased to do business with you at some future time, should the miners change their mind and be willing to use du Pont powder again.

5667

Yours truly,

W. S. McCaull,
President.

Q. Thereupon, Mr. Spicer, did you make an application to the company for a price for this business?

A. Yes, sir.

Q. Did you dictate that application yourself? A. I did, yes.

Q. And did you in that detail the conversation you had had with Mr. McCall? A. I did, yes.

5668

Charles B. Spicer—Direct

Q. And did you enclose it to the du Pont Company?

Mr. Button: I offer it in evidence.

Mr. Abbott: No objection.

(Same received in evidence and marked Defendants' Exhibit A-515, and read to the jury by Mr. Button as follows:

5669

APPLICATION FOR { CONTRACT
OR
SPECIAL } PRICE.

Your file CD-3544

Our " L-1409

Customer Great Northern Fuel Co.

Location, Kansas City, Mo.

Business Coal Operators

Work at Novinger, Mo. on Ry.

Associated with

5670

Previous sales None 1 bs.
Present Price \$1.15 for one year, from kegs
to

Price Desired \$1.10 Brand Du Pont

Supply Point, Mooar, Iowa.

Nearest Mill " "

Prob. Cons. { this year } 2500 kegs
}

DELIVERED

Competitors that have
sold in the past.

Buckeye now supplying
under contract

At	Del'y cost	per cwt.	keg
At Mooar	38	" 48	10-2/4 13-1/4
Belleville,	49	" 63	13-1/2 17-1/4
Kan. City	39	" 51	10-3/4 14
Peoria	48	" 60	13-1/4 16-1/2
Marion	65	" 95	17-3/4 26-1/4

What trade will be affected by the application of this price.

Statement of reasons making prices necessary. Referring to the trade of the Great Northern Fuel Co., Novinger, Mo., beg to advise that our Mr. Spicer visited Kansas City on the 19th inst., in order to see Mr. W. S. McCaull, President of this company, to whom the matter of a powder contract had finally been referred. We had written Mr. McCaull previously that Mr. Spicer would visit him at any time suitable to him, and a letter reached this office the day Mr. Spicer reached Kansas City, copy of which we enclose. Mr. McCaull stated that recently the miners in their employ made a demand for Buckeye powder because of its having Union labels, and rather than bring on a fight with the miners, they consented to this and bought some Buckeye powder and made a contract with them. He would not state the price, and when we suggested to him that we might have been able to overcome this had he let us know about it, he referred to matters of the past, particularly when their company was a new one, and said at the time they tried to buy DuPont powder the Du Pont Co. was not willing to sell them for some reason or other, and for this reason they did not feel like making a fight in favor of Du Pont as against Buckeye and for that reason made no effort to overcome the demand for Buckeye powder. This matter was discussed quite a little and Mr. McCaull stated that if later on the miners changed their minds, which they frequently do, they might be quite willing to try Du Pont powder, but as long as matters remain as they are, they will probably use Buckeye, unless there is some inducement for them to change the brand.

5672

5673

We regret that this business is lost for the pres-

5674

Charles B. Spicer—Direct

ent, and suggest that if you authorize the same figure to the Great Northern Fuel Co. as now applies to the two other operations in the Novinger district, viz.: the Rombauer Coal Co. and the Kansas City Midland Coal Co., this lower price might act as an inducement to the company to change back to Du Pont. If you will authorize this figure, we will make another attempt to get the business

August 21, 1905.

5675

E. I. Du Pont Co. St. Louis District.

Urgently need price by 19

Submitted to Sales Board Aug. 23, 1905

Approved

Approved by Sales Board Aug. 23, 1905

Promulgated unless stopped Aug. 24, 1905

E. I. du Pont Co.

By W. H. Watters,

General Agent.

5676

Mr. Button: And the letter from Mr. McCaull was as follows:

"Great Northern Fuel Company.

Kansas City, Mo., Aug. 18, 1905.

Mr. W. H. Watters, Gen'l Agt.

du Pont Powder Co., St. Louis, Mo.

Dear Sirs:

I have your favor of the 17th inst. concerning the supplying of powder to our mines at Novinger, Mo., and in reply beg to say that owing to action of Miners' Union your powder was boycotted and we were compelled to sign a contract for another brand of powder. Would be pleased to do business with you at some future time should the miners change their mind and be willing to use du Pont Powder again."

Q. Is that the application that you put in at that time (indicating)? A. Yes, sir.

Q. Was it dictated by you? A. Yes.

Q. And your initials on it? A. Yes.

Q. Did you send it to the du Pont Company in Wilmington? A. Yes.

Q. Did you attach to it a copy of this letter of Mr. McCaull that I have just read? A. Yes.

Q. That is the information that was sent on by your St. Louis office to the home office at Wilmington, was it? A. Yes, sir.

5678

Q. At this interview which you had with Mr. McCall, referred to herein, had he said anything about the prices at that first interview that the Rumbaugh and the Kansas City Midland had? A. At the first interview; no, sir.

Q. Did you see Mr. McCall again in Kansas City in regard to this matter? A. Yes, sir.

Q. About when? A. I would say about in the early part of September, but I cannot recall exactly.

Q. 1905? A. Yes, 1905.

Q. At that time did he say anything to you about the Rumbaugh business? A. Yes; he stated that he had learned indirectly that the Rumbaugh and Kansas City Midland Coal & Mining Company were getting better prices than he was enjoying under his contract, and wanted to know whether we would make the same price to him as we did to Rumbaugh and the Kansas City Midland.

5679

Q. What did you tell him? A. I told him we could probably arrange it.

Q. What else was said? A. Mr. McCall said that if that was the case he would see what he could do towards switching over to du Pont powder, and he said he would get some of his company men to make a demand for du Pont powder, and that he would see me later.

Q. What did he mean by company men doing so? A. He meant men that were friendly to the company as distinguished from those who might not be so disposed.

Q. That is, miners, you mean? A. Yes, miners; men working in the mines.

Q. Was there on that occasion, or on this previous occasion when you talked to Mr. McCall, anything said in regard to your going to Novinger to see the miners? A. No, sir; he said he would attend to that.

Q. Was there anything said in regard to your sending anybody else there? A. No, sir.

Q. At this interview in September he said he would attend to it, did he? A. Yes.

Q. And you did not go to Novinger? A. No.

Q. And a little later did you receive a further letter from Mr. McCall on the subject of this business? A. Yes, sir.

Q. In October? A. Yes. I got two different letters, or one anyway.

Q. Is that it—October 17, 1905 (indicating)? A. Yes.

Q. Is that his signature? A. Yes; that is his signature.

Q. And another one October 24, 1905? A. Yes.

Q. Is that his signature (indicating)? A. Yes, sir.

(The letters referred to were marked Defendants' Exhibits A-516 and A-517, and were read aloud to the Court and jury as follows):

Kansas City, Mo., Oct. 17, 1905.

Mr. Chas. B. Spicer,
St. Louis, Mo.

Dear Sir:

On my return to the city, I am in receipt of

1895

Charles B. Spicer—Direct

5683

your favor of the 11th, and also learn that you called to see me last week. Very sorry I was not in. Our Superintendent advises me, however, that things are not in such shape at Novinger that we can make a contract with you at this time.

Yours very truly,

W. S. McCaull,
President.

Kansas City, Mo., Oct. 24, 1905. 5684

Mr. Chas. B. Spicer,
St. Louis, Mo.

Dear Sir:

I have yours of the 20th, also your telegram, on my return to the office this morning. I guess you will think I am a pretty hard person to find, but I am down in Oklahoma nearly all my time. I expect to be in St. Louis in a couple of weeks, and will see you personally in regard to the powder question. 5685

Yours truly,

W. S. McCaull,
President.

Q. In accordance with that letter, did Mr. McCaull call upon you in St. Louis? A. Yes; he did.

Q. What did he do then? A. We discussed the powder proposition again, and he finally expressed a willingness to close a contract with us, and we had the contract papers made up and he signed the contract.

Q. There and then? A. There and then.

Q. Had you been at Novinger at all during all of this performance? A. No, sir.

1895

Q. When was the first time you went to Novinger? A. The first time I went to Novinger was in February, 1907.

Q. What was the occasion of your going there then? A. There was a complaint that came from the Kansas City and Midland Coal & Mining Company. The complaint came in the shape of a telegram advising us—

Q. No matter about that. You went down there to settle some dispute about du Pont powder, with the Kansas City Midland in 1907? A. Yes.

Q. That was the first time you ever went to Novinger? A. Yes, sir.

Cross examination by Mr. Abbott:

Q. Mr. Spicer, you say you were present in Kansas City when these depositions were taken? A. Yes, sir.

Q. In which you were mentioned as having been at Novinger. Did you observe the men who identified you at that time? A. The men who identified me with your assistance.

Q. With my assistance? A. Yes, Mr. Abbott.

Q. Did you see me assist any of them? A. Yes.

Q. State in what manner. A. From the fact that you called on Mr. Stevens to identify Mr. Spicer at the same time you asked me to stand up, and like a fool I did.

Q. Did I ask you to stand up before he identified you—will you swear to that? A. I did not say before; I said just at the same time.

Q. Did these gentlemen, when they identified you, get any signal or anything of that kind from me to the effect that you were the man desired to be pointed out? A. Nothing other than your request for me to stand up.

Q. Did not Mr. Stevens, who was the first one

to identify you after looking around the room state he saw a man in the rear, who looked like the man sitting over there, is not that true? A. No, I didn't sit alone, I sat with—

Q. You were sitting with another gentleman, in the rear, and each one of them pointed you out and I asked you then to stand up, is not that true? A. You asked me to stand up and I stood up.

Q. After they had pointed out a gentleman sitting back there, you two? A. I was back there, yes, sir, and he pointed in the general direction of both of us. 5690

Q. I asked you to stand up? A. Yes, sir.

Q. Did any of the other gentlemen show any hesitation in pointing you out as the party they had seen? A. Am I to answer the question?

Q. Yes. A. I think they did.

Q. Did I point at you in that manner on that occasion? A. I had already been identified then.

Q. Were these gentlemen in the room, all of them at the time? A. Yes, sir.

Q. Isn't it a fact that two of them were not there? A. I do not recall, I think they were all there on this day. 5691

Q. Nevertheless you were pointed out as the man they had met in Novinger, were you not? A. Yes, sir.

Q. By four different men? A. I recall that one of the parties clearly indicated that he could not remember the party.

Q. Which one was that? A. I cannot be sure; but I think it was the last one.

Q. Then there were three. There were five that testified altogether, and you will admit that three of them pointed you out? A. I will not admit quite that much. I do not remember just the testimony, but my recollection is that those following Mr. Stevens were rather hazy in their identification of me.

Q. At any rate, they did point you out? A. With that qualification, yes, but they were rather hazy. Their testimony will indicate to what extent.

Q. Yes. They did not hesitate to say that you were the party that came to them in Novinger? A. I think they did.

Q. Your judgment is, then, that you were not well identified at that time? A. Yes.

5693 Q. The record in the case would have to be referred to in order to determine whether your judgment was right? A. Yes, sir.

Q. All right. Do you make reports from day to day to your office as to where you were? A. Yes, sir.

Q. Did you make any report of where you were during the time when this particular affair was said to have occurred at Novinger? A. Yes, sir; I made reports to the St. Louis office.

Q. Have you those? A. No. I have not been connected with the du Pont Company for two years.

Q. Could you find them, do you suppose? A. I don't know anything about them.

5694 Q. This time you had this conversation with Mr. McCall in St. Louis, will you give the date about when that was when you finally closed your contract? A. The contract was dated November 1st, and it was several days after that that Mr. McCall dropped into the office, and he asked that the contract be dated back to November 1st.

Q. Do you remember anything that passed between you and Mr. McCall at that time in reference to compliments as to your success in putting this deal through? A. Whereabouts do you mean?

Q. In St. Louis. A. No, sir.

Q. Nothing at all? Do you remember you gave Mr. McCall an umbrella as a compliment to him for having assisted you in getting that contract through? A. I remember Mr. McCall practically

grafting me for an umbrella. He said he thought a deal of that consequence should be worth at least the price of a \$5 hat. Yes, the price of a five dollar hat, and when the contract was signed he decided that he did not need a hat, but he would like to have an umbrella for his wife. That is the first time that any proposition like that had been put to me.

Q. Well, you gave him the umbrella? A. At his request, yes, not at my suggestion at all.

Q. I was trying to find out whether or not you did, and it seems you did give it to him. You have, at various times, made cut prices to people for powder? A. I would not say I had.

5696

Mr. Button: I object to that as not cross examination.

Mr. Abbott: As I understand it, one of those documents shows that he made a better price to the Great Northern Fuel Company than they were receiving? If that is not correct then I am mistaken.

Mr. Button: Testified to here to-day?

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Mr. Abbott: Yes. Where is that document?

The Court: In that document he asked him for a special price.

Mr. Button: Yes, and also said he did not know what the Buckeye price was.

Mr. Abbott: This states here that the present price the Great Northern is paying is \$1.15 and the price desired is \$1.10.

The Witness: The present price I would have been authorized to quote or that the du Pont Company authorized at that time, was \$1.15. If there was a lower figure I had to make application for a special price.

Q. Did you make a lower price? A. Yes.

Q. Which was \$1.10? A. Yes.

Q. Which was less than they were paying? A. At that time, I have no knowledge whether it was or not, but it was the same price we were quoting the Raumbauer and the Kansas City Midland, and was the prevailing price according to our information at that time.

Q. You asked him for a lower price, did you? A. Yes.

Q. Did you get it? A. Yes.

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Q. And you closed with him on account of the lower price you gave him, did you not? A. I don't know why he closed.

Q. I say you did close with him on account of a lower price? A. I closed with him, I don't know why he closed. We were glad to get his contract at a price we were authorized to name.

Q. You have from time to time, have you not, Mr. Spicer, approached or used your influence and employed miners to use their influence to put du Pont powder in various mines, have you not? A. I have done what?

5700

(The question was repeated by the stenographer).

A. I have not employed any miners, no.

Q. Have you employed anybody in the mines for that purpose? A. No, sir.

Q. You remember giving your testimony in this case in St. Louis, do you not? A. I presume my memory could be refreshed on it.

Q. I will ask you to state if this did not occur at that time:

(Reading testimony): "Q. Did you ever approach any person or persons with reference to influencing miners in the mines of persons to whom you were trying to sell powder, to accept your powder in that mine and make a demand for it on the operator? A. I cannot recall at the present time.

“Q. Will you state you did not? A. I think I will let the answer go as it stands.” Did you testify that way? A. I did, yes, sir.

Q. Why was it, then, you were not willing to go on and tell what you knew about it, instead of letting the answer go as it stood? (Objection overruled) A. Well, I told them all I knew about it.

Q. Did you ever employ any miners in a mine known as the Duquoin mine at Duquoin, Illinois? A. No, sir.

Q. You are sure you did not? A. I am quite sure.

Q. Did you ever attempt to employ any miners in that mine to put in du Pont powder and throw out another powder? A. No, sir.

Q. Did you ever employ any miners in the mine of the DeCamp Powder Company for the purpose of putting in du Pont powder and putting in other powder, Buckeye powder particularly? A. No, sir.

Q. Do you remember going to the superintendent of that mine and telling him if he would queer Buckeye powder you would make it all right with him? A. No, sir; I never made any such statement.

Q. Did you not before you obtained the contract with the Great Northern Fuel Company make a price as low as \$1.05? A. That is the price at which the contract was closed, yes.

Q. You still further cut below \$1.10, the price which you say you had authority to make later? A. I made a price of \$1.05, yes.

Q. And you got the business at \$1.05? A. Yes, sir.

Q. You made trade reports from time to time, did you not? A. Yes, sir.

Q. A good many of them? A. Quite a few of them, yes, sir.

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Charles B. Spicer—Redirect
T. C. du Pont—Direct

Q. Did you make trade reports of the business of Mr. Brechnitz from time to time? A. Yes, sir.

Re-direct examination by Mr. Button:

Q. Was this \$1.05 the same price that Rombauer and the Kansas City Midland were getting at that time? A. Yes, sir, at the price at which powder could be bought at that time.

5705

T. C. DU PONT, called in behalf of the defendants, testified as follows:

Direct examination by Mr. Graham:

5706

Q. Let me ask you to state who composed the Executive Committee of the du Pont Powder Company from 1903, when it was organized, down to 1908? A. Mr. Pierre du Pont, Alfred du Pont, J. A. Haskell, H. M. Barksdale, A. J. Moxham and H. F. Baldwin. Mr. Baldwin's place was taken in a few years by Mr. C. A. Patterson, and myself.

Q. Mr. Baldwin died in 1907, did he? A. Yes, 1907, I think.

Q. And his place was taken by Mr. Patterson? A. Yes, sir.

Q. You are also a member of the board of directors and President of the Company? A. Yes, sir.

Q. As a member of the executive committee and an executive officer of this corporation, do you know of any control exercised by the du Pont Powder Company over the Equitable, Austin, Egyptian or United States Powder Companies during that period? A. No, sir; none whatever.

Q. Was there any action ever taken by your ex-

executive committee or by your board looking to the exercise of any control over all or any one of these companies? A. No, sir.

Q. Did you have anything to do whatever with shaping the business policy or the prices for black blasting powder chargend by these companies or any of them? A. None whatever.

Q. Was there ever any arrangement made with these companies, or any of them, by the du Pont Company, by which the du Pont Company was to be compensated in any way for any losses which it might sustain in carrying on any competition against any competitor? A. None whatever.

5708

Q. Was there any such arrangement or understanding, express or implied, between your company and any of those companies concerning the Buckeye Powder Company? A. No, sir.

Q. In view of that, of course, it follows that the du Pont Powder Company never did receive any such compensation? A. None whatever.

Q. Was there any understanding or agreement made by you as executive officer of the du Pont Powder Company or by your executive committee or board with any other of the competitors in the black blasting powder business with reference to any such arrangement as this? A. None whatever.

5709

Q. Did you ever hear of any having been made by your company or your officers? A. No, sir.

Q. Was there ever any action taken or instructions given by you as the president or by the executive committee or by the Board of Directors of the du Pont Company to any of the employes or agents of your company to make a drive at the Buckeye Powder Company or its business? A. No, sir.

Q. Was there any action taken by you as the executive head of the corporation or by your executive committee or board of directors aimed at the Buck-

5710

T. C. du Pont—Direct

eye Powder Company or its business with the intention of driving it out of business? A. No, sir.

Q. I think you have already stated, Mr. du Pont, in your prior examination, that the policy of your company was to meet prices and not to cut them?

A. Yes, sir. When I came into the business I was told that at equal figures—

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Mr. Abbott: Wait a moment. Let us find out by whom you were told.

The Witness: By Mr. Waddell and Mr. Barksdale. They are two I happen to remember.

Mr. Abbott: While Mr. Waddell was in your employ?

The Witness: Yes, sir. du Pont powder at equal prices would have preference, and for anybody to get their business they would have to reduce the price.

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Q. Have you any knowledge, as the president and executive officer of the du Pont Powder Company, of any action having been taken by yourself or the executive committee or the board of directors authorizing or directing a cut in prices below what was necessary to meet the quotation or what you understood to be the quotation of some competitor? A. No, sir; not that I ever heard of.

Q. A good deal has been said here, both by counsel and by the witness Mr. Waddell, about the establishment of a contract system. Do you know of the establishment of any contract system by the du Pont Powder Company, its officers or directors? A. I know that powder was sold under a contract. The business was such that frequently that it a necessity, and that was so when I came with the company, and a good many years before—

Q. You mean when you came in contact with the business, a good many years before? A. Yes.

Q. Because this company I am speaking of was organized in 1903. What I am particularly asking is this: Was there any system created for making contracts for the purpose of tying up the business of the country, or were these contracts those which were made in the usual and natural course of business? (Objected to and objection overruled.) A. As I say, when I got into the powder business in 1902, for a good many years before that it was a custom to have contracts for powder, and the usual course of business in many cases demanded a contract. There was nothing done in the way of creating a system of any kind, nothing that I know of.

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Q. Do you know of any action taken, either by your executive committee or the Board of Directors, to create any system of making these contracts? A. No, sir.

Q. From 1903 on down to 1908, inclusive, who fixed the prices at which powder was sold—the du Pont Company independently or in connection with any other company? A. The du Pont Company fixed their own prices.

5715

Q. Did they consult or confer with the Equitable, the Egyptian, the Austin, or any of these other competitors that were in that field with reference to what prices should be charged? A. Not that I know of or heard of.

Q. Was there any arrangement or understanding between you and any of these companies with reference to prices? A. No, sir.

Q. Or with any of the other competitors, the King, the Miami and the others that have been mentioned as competing in this district? A. There were not.

Q. Mr. du Pont, Mr. Waddell has testified that

one of these interviews held with him when he was about leaving the employment of the du Pont Company and starting out for himself, you said or offered him 25,000 of preferred and 25,000 of common stock in your corporation, in the Powder Company. Is that true or not; what is the fact? A. I think Mr. Waddell left us in December, 1902, and the Powder Company was not formed until some time in 1903, so it could not have been the fact and was not the fact.

5717

Q. So that there was no stock in existence at that time to offer to him? A. That is right.

Q. Mr. Waddell has testified that at one time you came to him to ask his advice and did inquire of him how you could get rid of Donnelly's howlers in the mine. Did you ever have any such conversation or go to him and inquire about such a subject as that? A. I don't think I ever went to Mr. Waddell's office—

5718

Q. In the Smoky Hollow Coal Company, it was connected with? A. I don't think I ever went to Mr. Waddell's office. He came to my office. And I certainly would not have asked him about a man not in his district. And I know how to get rid of a man without asking Mr. Waddell or anybody else.

Q. In the first place you say you did not go to his office, and as to the fact itself, did you hold any such conversation with him as that? A. No, sir.

Cross examination by Mr. Abbott:

Q. These three companies that were named to you that you say you never exercised any control over in any way,—the Equitable, the Austin and the United States—the du Pont Company had a

stock interest in those companies, did it not? A. It had a stock interest in the Equitable and in the Austin.

Q. And Mr. Olin is a large owner, is he not, in the United States? A. I understand so.

Q. And he was during a good portion of the period? A. I don't remember when they made that arrangement.

Q. You do not know about that. Is it not a fact that Mr. Haskell was a member of the Board of Directors of the Equitable Powder Company? A. I think we had two representatives on the Board, but they had nothing whatever to say with reference to the policy of the business.

5720

Q. Then, it is because of the fact that you say they do not attend the meetings and do not attempt to vote the stock independently that they exercise no control over the affairs of the company? A. I did not say they did not say they did not attend the meetings. At least, I did not intend to.

Q. Well, what is the fact about that; did they attend the meetings? A. They may or may not have done so. I don't know.

5721

Q. You do not know as to that? A. But I know others that have been directors have always said they had no control or anything whatever to do with the business.

Q. You have also stated that your company during the time that the Buckeye Powder Company was in existence did nothing in the way of making a drive at the Buckeye Powder Company. What did you understand by that term drive? A. To put prices below their prices, or anybody else's prices.

Q. And is that all—the question of prices? A. What do you mean by is that all?

Q. I am asking you for your interpretation of

the word drive. A. When I answered the question that is what I had in mind.

Q. Do you know anything about a price of 95 cents that was made to the trade in the district that Mr. Waddell or the Buckeye powder reached from 1905 to 1907? A. No, sir; I do not.

Q. You do not know about that? A. No, sir.

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Q. You do not know anything about that price having been made to something in the neighborhood of 400 or 450 different customers in that district? A. No, sir.

Q. Then you do not know anything about what transpired in the sales board? A. I don't know anything about that? If you will ask me the question I might know something.

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Q. I was trying to draw out your information when your counsel interrupted. Do you know anything about any prices which were made—that is, a rate of 95 cents—to something 400 or 450 consumers of black blasting powder in that district? A. I don't remember of any price of 95 cents being made to anybody.

Q. You say that wherever you made a cut in prices it was made solely for the purpose of meeting some other person's price for the purpose of getting business? A. I don't remember saying we made a cut in prices.

Q. I don't want to misquote you. I have a note to the effect that is what you said. If that is not the fact, correct me, please. What is the fact about that; did you ever make a lower price for any purpose whatever than your regular price for powder? A. We met prices of our competitors.

Q. Whenever you made a lower price it was for the purpose of meeting a price made by a competitor? A. Yes, sir.

Q. That you know of your own knowledge, do you? A. No; those were the instructions.

Q. So you know nothing about the matter of making prices, of your own knowledge? A. No, sir.

Q. Now, this matter of the contract system, about which counsel interrogated you. You say, if I did not misinterpret your testimony, that you merely took over a custom which prevailed at the time when the powder company was organized. Is that correct? A. The contract system was there when I got in the powder business.

Q. And you followed a system which was in existence at that time? A. Yes, sir. So far as I know there was no change made in it.

5726

Q. I beg your pardon? A. There was no change that I remember.

Q. And whatever you did in the way of making contracts, then, was a continuation of what had preceded the organization of the powder company? A. Well, as far as I know; but the details I paid practically no attention to. It was a matter for the sales department.

Mr. Abbott: That is all, Mr. du Pont.

5727

HAMILTON M. BARKSDALE, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Graham:

Q. What is your official position in the du Pont Powder Company? A. I am a member of the board of directors, a member of the executive committee, and vice-president.

Q. You are part, then, of the executive and administrative departments of the corporation? A. Yes, sir.

Q. Your associates on the executive committee are those whom Mr. T. C. du Pont named? A. Yes, sir.

Q. Do you know about what time Mr. Baldwin died? A. Mr. Baldwin retired as a member of the board of directors and a member of the executive committee, I think, in 1907.

Q. The latter part of 1907, or earlier? A. I have no recollection of the exact time.

Q. And he was succeeded by Mr. Patterson? A. Charles L. Patterson.

Q. Was or was not the executive management of the du Pont Company and its affairs in the hands of this executive committee? A. Yes.

Q. So you would be acquainted with and know what the policy of the company was and what the instructions to the agents and employees would be? A. Yes, sir.

Q. Now, I want to ask you whether you, as an officer, or your executive committee or your board of directors of the du Pont Powder Company, exercised any control whatever over the policy or business of the following companies: Equitable, Austin, Egyptian and the United States Powder Companies? A. We did not.

Q. Did you have anything to do with fixing or adjusting the prices which they or any them charged for black blasting powder which they sold? A. None at all.

Q. Did they have anything to do with fixing or regulating the prices which the du Pont Powder Company fixed for the sale of its black blasting powder? A. Certainly not.

Q. Did any competitive company or any other corporation have anything to do or say with the adjustment of your prices? A. No, sir.

Q. Was there ever any arrangement between yourself or the executive committee or board of di-

rectors with any of the companies that I have named or any of the other competitive companies by which the du Pont Company was to be compensated in any way for any loss that it might sustain through any competition with a competitor? A. No such compensation was ever paid us—

Q. That is hardly the question. Was there ever any agreement or understanding by which you were to be compensated? A. No, sir.

Q. And you have added that none was ever paid you, of course. Do you know of any action having been taken by yourself, as one of the executive officers, by the executive committee or the board of directors of the du Pont Powder Company, against the Buckeye Powder Company for the purpose of driving it out of business? A. No, sir.

5732

Q. And by driving it out of business I mean to include the cutting of prices or any other expedient that might be suggested or adopted? A. No, sir.

Q. You never heard of any such step being taken, did you? A. No, sir.

Q. Was there or was there not any attitude differing from your attitude toward all competitors taken by the du Pont Company toward the Buckeye? A. No, sir.

5733

Q. Do you know of anything that was done by the du Pont Company especially directed against the Buckeye Powder Company as a competitor? A. I do not.

Q. Were there any other competitors in the field besides the Buckeye during this period? A. Oh, yes.

Q. Will you name some of them or all of them if you can? A. There was the Austin, the Burton, the King, the Miami, the United States, the Egyptian, the Senior. That is as full a list as I can recall at the moment. Oh, yes, I think I failed to mention the Equitable.

5734

Hamilton M. Barksdale—Direct

Q. As I understand it, of course the du Pont Company had a 49 per cent interest in the stock of the Equitable Company? A. Yes.

Q. And that stock had its representation in the board? A. Yes.

Q. Was the Egyptian an independent competitor? A. Yes.

Q. Was the stock of that company acquired at any time by the Equitable? A. Yes; I understand so.

5735 Q. About what time? A. I cannot give you the date. I have no knowledge in regard to details at all.

Q. Can you state whether or not it was some considerable time after the Buckeye started in business? A. Oh, yes.

Q. Several years? A. Yes.

Q. I understand also that Mr. Olin had some stock in the United States Company? A. Yes, I so understand.

5736 Q. Taking all those circumstances into consideration, you still say that the du Pont Powder Company, and its board of directors, executive committee and yourself, and as far as you know your associates, had nothing whatever to do with the policy or the shaping of the policy or the prices or the business of the Equitable Company? A. We left that entirely to the majority ownership of those companies.

Q. What was the attitude of the du Pont Powder Company during this period with relation to reducing prices?

Mr. Abbott: I think that question is a little too broad and I object to it for that reason.

Mr. Graham: Substitute "policy" for attitude.

Mr. Abbott: It is pretty nearly as broad in that form, but I think I will not object to it.

The Witness: Will you repeat that?

(The question repeated).

A. A policy of reducing prices as little as possible in order to retain the trade that we had been serving in that territory.

Q. Do you know of any prices having been cut other than a reduction to meet competition? A. 5738
No.

Q. What was the policy as practiced by yourself and associates in that respect? A. To endeavor to retain the trade by making a lesser reduction than that necessary to meet the quotation of the competitor; never to go below the quotation made by a competitor.

Q. Was there any action taken by yourself of your associates in the committee or board to establish any system of contracting so as to tie up the trade in the black blasting powder business? A. 5739
No.

Q. Were there any contracts made other than in the usual course of the business? A. No.

Q. State whether it is or not a fact that customers requested you to make contracts for periods of time? A. In many instances; yes.

Q. Do you know of any reasons that existed for making these contracts, following the convenience and the usual custom of trade? A. Reasons on the part of the buyer?

Q. Yes? A. Oh, yes; many instances in which the buyer who procures explosives must determine at what prices he must secure his explosives in order that in turn he can make his bid for work he has in view.

Q. Do you remember the request that came from

the powder consumers of the Pocohontas coal field for contracts, that your company should make contracts with them? A. No; I don't remember it.

Q. You do not remember that incident. Now, Mr. Barksdale, do you know whether or not your associates entered into any conspiracy or combination directing toward the driving of the Buckeye powder out of business? A. No, sir; they never did.

Cross examination by Mr. Abbott:

5741

Q. Mr. Barksdale, as I understand it, you have been connected mostly with the dynamite end of the explosive business. Is that correct? A. So far as operations are concerned; yes, sir.

Q. You were connected with that business, were you not, that part of the explosive business, before you connected yourself with the powder company? A. Yes, sir.

Q. How long before? A. I first came into the explosives business in 1887.

5742

Q. And were you associated, were you not, from time to time, with Mr. Haskell, in connection with the handling of dynamite? A. Yes, sir.

Q. And in the handling of the interests which he represented at that time? A. The dynamite interests that he represented?

Q. The dynamite interests that he represented. A. I was; yes.

Q. And you were continuously associated with him down to the time you became associated with the powder company? A. Yes, sir.

Q. You had some experinice, had you not, previous to the time when you entered the powder company, with the making of contracts with customers? A. Oh, yes.

Q. And the contracts which you made, or which you had anything to do with, were contracts which

were made largely for the consumption of dynamite, were they not? A. That I personally made?

Q. Yes; or that the interests that you represented made. A. Are you speaking now of the time prior to the formation of the powder company?

Q. Yes; prior to the time you became associated with the powder company? A. Yes.

Q. The same method of contracting for explosives, either dynamite or blasting powder, that prevailed prior to the time when you became associated with the powder company has continued since? A. Yes, sir.

Q. The same thing? A. Yes, sir.

Q. You state that one of the reasons why some of your consumers, or some of the consumers of explosives, desire to have contracts is because it enables them to know how they will deal with particular instances, where they had to know the price of their explosives before they go in and make a contract. Is that correct? A. Yes.

Q. Does that apply to blasting powder? A. Frequently.

Q. Tell me why it applies to blasting powder in view of the fact that the consumer of black blasting powder always has a contract with his miner whereby he knows just what the miner is going to pay him no matter what he pays for his black blasting powder? A. I was not referring to that portion of the black blasting powder consumption that is in connection with coal mining.

Q. What portion, then, of the black blasting powder consumption were you referring to? A. That portion which is used in construction work, and quarry work.

Q. Oh, yes. Then, it is only such contracts as are made, say, by railroad contractors, or others who have to have black blasting powder in connection with high explosives, such as dynamite? A. I will have to make that more specific.

5746

Hamilton M. Barksdale—Cross

(The question was repeated.)

A. Such contracts—what do you mean?

Q. I mean those are the kind of contracts you have reference to where the purchaser must know what he must pay for his explosives always in advance and therefore must have a contract? A. That was the particular kind of contract to which I referred in my previous answer.

5747

Q. Yes, sir. Now, do you or do you not know that practically every consumer of black blasting powder where that powder is used for mining purposes, for coal mining purposes, who has a sufficient amount of black blasting powder to entitle him to have a contract, is or was under your contract with your company from 1903 to 1908, in the district known as the Central District? A. Is the question whether I know that all of our customers in that district throughout that period were under contract—

Q. Who were entitled to have a contract. A. I don't know that.

5748

Q. Do you or do you not know that according to the system of contracts which prevailed during this period no consumer of black blasting powder who did not consume at least 1200 kegs per year was entitled to have a contract? A. I did not know that detail.

Q. You say that the powder company did not at any time, to your knowledge, as I understood you, do anything which was in the nature of a special drive or special effort against the Buckeye Powder Company. I understand you correctly, do I? A. That is correct.

Q. Do you know anything about a price which was made to a large number of consumers of black blasting powder in 1905, 1906 and 1907 at the rate of 95 cents? A. I only know that in the acute com-

petitive conditions that existed throughout that Middle Western country during the period to which you have reference we with reluctance followed the declining market and finally reached a price below which we would not go, preferring to see the trade go to others. I cannot say at this moment that that price was 95 cents.

Q. Now, then, as a matter of fact, do you have anything to do with the making of prices for black blasting powder? A. Personally?

Q. Or did you have during this period? A. Did I personally have anything to do? 5750

Q. Yes. A. Only in my capacity as a member of the Executive Committee in so far as the policy to be followed by our sales department was fixed.

Q. By whom? A. By the Executive Committee.

Q. If that price was made by the sales board of the powder company, then it was made by authority of the powder company, was it not, even though you did not have knowledge of it?

Mr. Graham: That is a hypothetical question. 5751

The Witness: That is a question I would like to have a little more clearly put.

The Court: I think it may be asked.

A. If made by the Sales Board?

Q. Yes. A. Yes, I do not think our sales board, while it was in existence, would have made a lower price than that fixed by the policy outlined by the executive committee.

Q. But now your answer is not exactly responsive. What I want to know is that if a price of 95 cents was made to a large number of customers during the years 1905, 1906 and 1907 by the sales board, then it was made by authority of the Powder Company, even if you did not have personal knowl-

edge of that fact, or even if the executive committee did not have personal knowledge of that fact? A. If it is a fact that our general price throughout that territory during the period to which you refer was 95 cents, then I should say that the executive committee had authorized that minimum.

Q. Now then, would it not also be a fact that if certain special prices at the rate of 95 cents during that period, that that also would be made with the authority of the Powder Company? A. No—

5753

Q. If it was made by the Sales Board? A. You are rather confusing me by the introduction of this sales board. Do you—

Q. You do have a sales board, do you not? A. No. We have a sales department. That sales department has certain methods of its own for handling the business entrusted to it. Do you use sales board in a synonymous sense with sales department?

Q. If I state this to you—perhaps you will understand why I am asking you this question. You know who Mr. Coyne is, do you not? A. Yes.

5754

Q. He is your director of sales, is he not? A. Yes.

Q. If he has stated several times on the stand that there was a sales board and that that sales board made certain prices then he spoke authoritatively, did he? A. Yes. That is a portion of the business that came under his department.

Q. That is the department that you have in mind when you say it was authorized to make certain prices? A. The instructions or authority issued by the executive committee in matters of sales are issued to our sales department. The executive committee holds the head of that department responsible. What arrangement or organization the head of that department may have for handling the details

for his department is largely a matter of his own judgment.

Q. Now I would like to have, after this explanation, I would like to have you give me a direct answer on that point, so we may have no confusion in your testimony. That is, whether or not if certain prices were made by the Sales Board during the years 1905, 1906 and 1907, at the rate of 95 cents, to a large number of consumers, that then those prices were made by the authority of the Powder Company? A. I should think that was probable. I do not believe authority would be exceeded by our sales department. 5756

Q. You have never yourself, as I understand from your testimony now, given any specific attention to the making of prices either in particular cases or in general cases with reference to black blasting powder; that is not a part of the business of the Powder Company which immediately comes under your control, is it? A. No; it is not.

Q. As a matter of fact you see very little of that department? A. Yes. 5757

Q. So that when you say that you have never made special prices for special purposes, such for instance, as getting certain special business or even putting a customer out of business, those are things that you only know from having gotten a report from some other part of your organization? You would not know that personally? A. I don't think I made any such statement as that.

Q. You stated on your direct examination that you endeavored to obtain business either in special or general cases by making a reduction but never a lesser reduction. Did I understand that correctly? A. I stated that as the policy of the executive committee of the company which lays down the policy that the several departments of the company must follow. That was my statement.

Q. Did you make the statement or not that while you made reductions it was never a lesser reduction? A. No.

Q. Then, as I understand it, Mr. Barksdale, your testimony is to this effect: That while you made reductions in prices for the purpose of meeting prices made by competitors, you never made a less price than that competitor made for that specific business. Is that correct? A. My statement, Mr. Abbott, that that is the policy announced by the executive committee of our corporation.

5759

Q. I see. Now, then, is or is it not possible that that policy may at times have been violated or that rule broken by the powder company or some of its officers? A. Oh, possibly by some salesman being misinformed as to what is the price his competitors are quoting, or misinformed in some other way. It would be an isolated instance, I should think.

Q. Then, as a matter of fact, you do not know anything about the conduct of that department of your business? A. The sales department?

5760

Q. Yes. A. I have never had any connection with the sales department.

Q. You stated that you had certain competitors and you named the Austin. You own 33 per cent. of the stock of the Austin Company, do you not? A. Approximately.

Q. And have owned it during all of the time of the existence of the Powder Company? A. Yes.

Q. You stated that the Equitable was another one of your competitors, and in that company you own 49 per cent. of the stock, do you not? A. Yes.

Q. And have owned it during the entire period of the company's existence? A. Yes. That is of the Powder Company's existence?

Q. Yes. A. Yes, sir; of the Powder Company's existence.

Q. And you stated that the Egyptian was one of your competitors. The Egyptian was owned by the Equitable Powder Company, was it not? A. Not in the beginning, but I believe in the end they acquired it.

Q. Are you or are you not or were you or were you not at any time a member of the Board of Directors of the Equitable Powder Company? A. Never.

Q. You said the King Powder Company was one of your competitors. I will ask you whether or not down to the period of 1906, some time in the spring of 1906, you had a contract with the King Powder Company or the King Mercantile Company, for the purchase of its entire output? A. The King Powder Company's contract was cancelled.

5762

Q. In 1906 it was cancelled? A. I don't remember the date of the cancellation of that contract.

Q. But it was cancelled in 1906, sometime, was it not? A. Well, I say I don't remember the date. Up to the cancellation of that contract we did sell their black blasting product. Subsequent to that time they were very active.

5763

Q. But you had a contract in 1906, down to that time? A. I don't remember the date, but up to the date of the cancellation of the contract we sold thier black blasting product. Subsequent to that time they were very active competitors.

Q. And you paid something like \$100,000 for canceling that contract at that time, did you not? A. Yes, sir.

Q. You said that the Miami Company was one of the competitors. Who was the president of that company at that time? A. Really I don't know, but——

Q. I will ask you if it was not Mr. Fay. A. Mr. A. O. Fay was president of that company for many

5764

Hamilton M. Barksdale—Cross

years, but for some years before his death his health was such that he paid no attention to business.

Q. I was only asking you for the fact of whether or not he was the president.

The Court: Which company?

Mr. Abbott: The Miami.

5765

Q. Is it not a fact that until some time in 1905 the Powder Company had a contract known as the Sullivan agreement whereby there was an arrangement between the Miami Powder Company and your company for the allotment of certain business between your companies and other things? A. I remember that there was such an arrangement as you refer to, but my recollection does not connect the Miami Powder Company with it.

5766

Q. Do you know that there was an agreement made by Mr. Sullivan in the name of Sullivan on behalf of the Powder Company with Fay and certain interests he represented? A. My recollection is—I may be in error of course, but my recollection is that the Fay interests there was the Fay dynamite interest.

Q. If that agreement did include the Miami Powder Company interests, then your statement that that was a competitor previous to some time in 1905 would not be correct, would it? A. Not if the Sullivan agreement covered the territory to which my previous question related.

Q. What territory did that relate to? I did not know it was restricted. A. I don't recall.

Q. What territory does it relate to, will you say? A. I say I don't know.

Q. You did have some sort of an agreement with the Miami Powder Company, did you not, for the allotment of business between you? A. I have al-

ready stated that I did not know whether that included the Miami.

The Court: What year was that?

Mr. Abbott: That was the early part of 1905. It was nine months from June, 1904.

Mr. Katzenbach: It ended March 30, 1905.

Mr. Abbott: Yes, somewhere along that time.

Q. The United States Powder Company you mentioned as one of the competitors. That company during this period became partly owned by Mr. Olin, did it not, and his associates connected with the Equitable Powder Company? A. I understand they had a minority interest there. 5768

Q. You stated that there were a number of instances in which customers requested you to make contracts. Can you recall any of those instances?

A. May I have my previous answer read?

Q. Yes, if it can be located. I would be glad to locate it. 5769

Mr. Graham: May I state my recollection of it?

Mr. Abbott: Certainly.

Mr. Graham: I asked Mr. Barksdale whether customers had not asked the Powder Company to make contracts, and he said they had.

Mr. Abbott: That is sufficient for my purpose.

Q. I want to find out who those customers were that requested that. A. I would not undertake to give specific instances.

Q. You cannot name any? A. Oh, yes; I could go back and name some, I presume.

5770

Hamilton M. Barksdale—Redirect

Q. Well, name them—— A. Whether I could name any in this period to which you have referred I do not know. I can go back prior to that time, when I had to do with the sales of high explosives, and mention some important cases of that sort, and what has followed since has been merely a continuation of that which existed then. Will it serve your purpose if I mention some——

5771

Mr. Abbott: I think your answer is sufficient. Yes, that is all.

Re-direct examination by Mr. Graham:

Q. You said, with relation to the contract system, that contracts had been made in the high explosives business back in your time, along prior to 1903. Is that the fact? A. Yes.

Q. It was not unusual to make contracts at that time, I understood you to say.

Q. Oh, no.

5772

Q. Now, the point of my inquiry was this—I want to see if I understood you correctly. In reply to Mr. Abbott you said the same method of making contracts was continued down. What do you mean by that? A. Well, you used in your question the word “system.” That is susceptible of several definitions. Nothing that we have ever done in the explosives industry in the way of selling under contract can, it seems to me, be properly defined as a system. We had a method.

Mr. Abbott: Now, may it please your Honor——

The Court: (Addressing witness): You are not interpreting your own language now. That is the trouble. I will allow you to

interpret your own language. Just listen to the question of Mr. Graham.

Mr. Graham: What I intended—perhaps I was not sufficiently explicit—was to draw out from the witness what he is stating now.

The Court: Do you want to reframe your question?

Mr. Graham: No. I will let it be repeated and let him finish his answer.

A. I mean the method previously followed in making contracts with customers covering the sale by us and the purchase by them of explosives was the method which we continued to follow after 1903.

5774

Q. Was there anything, Mr. Barksdale, in that method, as we call it, differing from that which is pursued in all business?

Mr. Abbott: That is objected to.

Q. (Continuing):—the making of contracts that grow spontaneously out of the growth of the business. (Objection overruled.) A. Nothing different from methods pursued by those businesses with which I have come in contact. We buy raw materials, for instance, under a similar contract.

5775

Q. Was there anything in that method that would be denominated a system to control or tie up the business of the country? A. Oh, no.

Q. So that when you answered Mr. Abbott if this method was continued, that is what you meant—the making of contracts in the usual course of business? A. Yes.

Q. This contract that the King Mercantile Company had expired about what time? A. I stated I could not remember.

5776

Hamilton M. Barksdale—Recross

Q. But after it did expire the King was a very independent and active competitor in the field, was it not? A. Yes, peculiarly active.

Q. Peculiarly active. And the Sullivan agreement that you speak of, if it included the Miami, related simply to the apportionment between the powder company and the Fay interests? A. My recollection of that is not distinct enough for me to answer that question in all its details.

5777

Re-cross examination by Mr. Abbott:

Q. In what way was the King Powder Company peculiarly active after that agreement was cancelled? A. In their efforts to secure trade?

Q. Yes. Well, you used the words "peculiarly active." I wanted to know what you meant by that. I would like to have you tell me now what you know of your own knowledge? A. What I know of my own knowledge?

Q. Yes, sir? A. Specifically?

5778

Q. Yes? A. Do you mean to follow that up by specific instances?

Q. Yes? A. I cannot say that. I don't know the details; I am not in touch with that end.

Q. You used the words "peculiarly active." I wanted to know what there was peculiar about the activity of the King Powder Company? A. The general level of prices they made in order to re-establish themselves in the industry.

Q. And you know about that of your own knowledge? A. Well, I think I would have to be a little careful about that.

Q. Very well? A. Except as reported to our executive committee, or our sales department, I would not know of it in any other way.

Q. So whatever information you have in that matter is something that has come in through your

various agents and salesmen? A. Has come into the executive committee through the regular channels for such information, namely our sales department.

Q. You stated that this contract system you referred to was not at all different from the system which were followed in other lines of business, if I did not misinterpret your statement. Will you state any other lines of business in which the contracts of a similar character to which you have been making, or your company has been making, are made or were made during this period? A. We purchase a large part of our own necessary materials under similar contracts. 5780

Q. No, you misunderstand me. I want to know some other line of business now, somebody else's business, that you can give me the name of, where this system of contracts or a similar system is carried on? A. My most intimate knowledge in matters of that sort, in connection with the business, those businesses that we deal with, on the other side, where we are the buyers, and the other party is the seller. 5781

Q. Tell me some business, for instance? A. The acid manufacturers, for instance; the glycerine manufacturers.

Q. And those companies have contracts with their various customers of an exclusive character, similar to this? A. What do you mean by exclusive, Mr. Abbott?

Q. I would like to have you specify what it is now that these acid people or these other customers from whom you buy your materials insert in their contracts; what are the general provisions? A. A very common provision in an acid contract is for the entire requirements that the buyer will want at certain specified manufacturing points.

Q. How about this other—the glycerine? A. The glycerine contracts are usually quantity contracts.

Q. And do they have exclusive provisions in those contracts? A. In the glycerine contracts?

Q. Yes? A. No, I don't think so. We frequently buy coal—

5783

Q. Coal, did you say? A. I will be a little guarded about that. I don't want to make any misstatement. I am under the impression that we buy coal at times on the basis of the consumption at given points.

Q. Do you know anything about when this method of making contracts was originated? A. No.

Q. You do not know anything about that? A. It was before my time.

5784

Q. Going on a little further on this line of interrogating, to find out what other concerns with whom you have had business, do with reference to making contracts, I would like to have you tell us now just how wide in extent is the business of the acid manufacturers of this country; is it one that covers a very large portion of the country, or are there comparatively few customers for acids, are there few purchasers of acids? A. My impression is it is a large business.

Q. Does it apply to druggists and to every consumer of acid that may consume acid in a general way throughout the country? A. Does what apply?

Q. This contract system? A. I don't know.

Q. You do not know anything about that? A. No, sir.

Q. And the same would apply to glycerine? A. I have no idea of the limits as to quantity a refiner of glycerine places or fixes when he concludes, for instance, that above this limit I will make contracts and below that limit I will not.

Q. As a matter of fact, Mr. Barksdale, you have no knowledge of what other lines of business in this country do with reference to making contracts excepting such ones as you have happened to come in contact with personally, who have asked you to make contracts; is that it? A. When you——

Q. Can you not answer that directly? A. If I have to answer it from the standpoint of my own personal knowledge, if I am to exclude in my answer my general understanding as a business man, as a manufacturer, the methods followed by other manufacturers, if I have to exclude that—— 5786

Q. Yes, I think that is not proper. If the Court please, I do not think it is proper for you to say what your general understanding is, but what I want to know is your personal knowledge. I am perfectly willing to have you tell what you know personally.

(After argument question withdrawn).
Mr. Abbott: That is all.

5787

ALFRED G. CUMMINGS, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Graham:

Q. Where do you live? A. At Terre Haute, Indiana.

Q. What is your business? A. Manufacturing and selling black blasting powder and blasting supplies.

Q. Are you in business for yourself or a corporation? A. For a corporation.

Q. What is the name of the corporation? A. United States Powder Company.

Q. What is the location of the mill of the United States Powder Company? A. About 24 miles south of Terre Haute, near a town called Coalmont.

Q. In what State does the United States Powder Company sell its product? A. In Ohio, Indiana and Illinois, Kentucky, Missouri, Texas, and I have sold powder in Colorado. I think that covers most of the territory.

Q. That is sufficient for my purposes. You sell it in those States mentioned? A. Yes, sir.

5789 Q. When was the United States Powder Company organized? A. In 1904.

Q. Did you take part in its organization? A. Yes.

Q. What is your connection with it—as a stockholder and officer? A. I am a stockholder and an officer. I am vice-president and general manager and treasurer.

Q. How long have you held those positions? A. I have been general manager of the company from the beginning; also treasurer. I have been vice-president for three or four years.

5790 Q. What is the capacity of the United States Powder Company? A. We think we have a capacity of 2,000 kegs a day.

Q. How long did you say this corporation had been engaged in the powder business? A. This corporation has been operating, manufacturing and selling, since December, 1904.

Q. Then you are a new corporation that came into existence in 1904? A. Yes, sir.

Q. And embarked in this business? A. Yes, sir.

Q. How far are you separated from Peoria, according to distance, about? A. I do not know just exactly the distance from Terre Haute to Peoria. Our plant is south of Terre Haute 24 miles, and Peoria is about a five-hour ride by pas-

senger train from my city. I could not tell you the mileage exactly.

Q. Is the business policy or the fixing of prices of your corporation controlled in any manner by the E. I. du Pont de Nemours Powder Company, or by the officers of that company? A. They are not.

Q. Have they any voice or say in the management at all? A. They have not.

Q. Have they anything to say with reference to the fixing of prices at which you sell your blasting powder? A. They have not.

5792

Q. Have you anything to say in reference to the prices at which they sell their powder? A. Not anything.

Q. Did you ever have? A. Never.

Q. Did you ever have any agreement or understanding with the du Pont Powder Company or anybody connected with it— A. No, sir—

Q. Covering the sale of your product or the prices of that district or territory in which you might do business? A. No, sir.

Q. Have you or have you not always exercised through your own officers complete control over these matters? A. I have.

5793

Q. Was there any competition at the time you started in this business? A. Yes, sir.

Q. Do you know some people who are competing in that district? A. Yes.

Q. Will you name them as far as you can? A. The du Pont Powder Company, the Equitable Powder Company, the Austin Powder Company, the Burton Powder Company, the Senior Powder Company, the Buckeye Powder Company, the Egyptian Powder Company. I think possibly that is about as many as I can name just now.

Q. Was the Rand also a competitor in that field? A. I did not so regard it, as much of a competitor, the freight rates probably interfering with their

5794

Alfred G. Cummings—Cross
Jonathan A. Haskell—Recalled—Direct

coming in—excepting in Ohio. Yes, I would modify that; I would say the Rand was a competitor in Ohio.

Q. And the Excelsior Powder Company? A. No, not much.

Q. Not much. Where was their mill located? A. The Excelsior—at Kansas City—at Holmes Park, Kansas.

5795 *Cross examination by Mr. Abbott:*

Q. You came here under subpoena, did you, Mr. Cummings? A. No; I did not; I came here at the request of Mr. Simpson, of the du Pont Powder Company.

JONATHAN A. HASKELL, heretofore sworn, called as a witness in behalf of the defendants, testified as follows:

5796 *Direct examination by Mr. Graham:*

Q. You are a member of the executive committee of the du Pont Powder Company? A. I am.

Q. And a member of the board of directors of that company? A. Yes, sir.

Q. What other official position do you hold? A. Vice-president.

Q. Are you or are you not acquainted with the policy governing the executive and administrative management of that corporation? A. I am.

Q. I wish you would state to this jury whether or not, so far as you are concerned, or the executive committee or the board of directors of the du Pont Powder Company are concerned, you have or your associates, so far as you know, have exercised any

control whatever in shaping the business policy and prices of the following companies: Equitable, Austin, Egyptian or United States Powder Companies? A. With regard to the selling policy?

Q. Yes. A. We have exercised absolutely no control or influence. I as a member of the board of directors of the Equitable Powder Company have attended the meetings, discussed questions of acquisition of property—

The Court: This question does not embrace the Equitable—

5798

Mr. Graham: Yes; I meant the Equitable.

A. (Continuing): The other physical matters pertaining to the operation of the plant; but nothing whatever with regard to sales.

Q. You say you acted as a member of the board of directors of the Equitable. Who are the other members of that board? A. There are five directors. They are Mr. Olin and Mr. McMurray, and their attorney—I have forgotten his name for the moment—and Mr. Patterson and myself.

5799

Q. How many did you say there were? A. Five.

Q. Mr. Patterson and yourself represent this minority holding? A. Yes.

Q. And the others are Mr. Olin's connections, who represent the majority? A. Yes.

Q. Do they fix their own prices for their black blasting powder and conduct their own sales department independently of you? A. They have entirely since June 30, 1904.

Q. Mr. Haskell, was there ever any arrangement between the du Pont Company and any of these companies which I have named, or any other of the companies which I referred to as competitors, by which the du Pont Powder Company was to be compensated for any losses it might make in competi-

5800

Jonathan A. Haskell—Recalled—Direct

tion, in selling its powder in competition with any particular or any competitor? A. I know of no such arrangement ever having been made.

Q. You have never heard of any such thing? A. No.

Q. And so, of course, then the du Pont Company has never been compensated for its losses in that way incurred? A. It has not.

5801

Q. Was there ever, to your knowledge, any action taken by the executive committee or by the Board of Directors against the business of the Buckeye Powder Company, to drive it out of business? A. No, sir.

Q. Was there any action taken by the executive committee or board of directors or yourself and associates, as executive officers, making any special attack upon the Buckeye Powder Company? A. No.

Q. Did you or your associates ever do more than simply meet the competition existing at this time and during this period, or try to meet it? A. Often we did not attempt to meet it.

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Q. Many times you allowed the trade to go rather than to follow the prices? A. Yes.

Q. Was there any different attitude, or rather, was there any different policy maintained toward the Buckeye Powder Company than there was maintained towards all these other people who were in that field selling black blasting powder? A. I should say no, excepting for a very short period.

Q. And in that you refer to what? A. I refer to the time when we knew that the Buckeye Powder Company was selling its nitrate of soda, and therefore disregarded its quotations absolutely.

Q. Instead of making powder it was selling nitrate of soda on the market? A. That was the case.

Q. And the exception you referred to, when you disregarded its prices, referred to competitive prices altogether? A. Absolutely, during that period.

Q. You did not try to meet them? A. No; paid no attention.

Q. Did you, Mr. Haskell—and I address this to you as one who was connected with the sales board for a time—either in that capacity or as a member of the Executive Committee or as a member of the Board of Directors, authorize or know of the authorization of a price other than to meet what you understood to be the prices of competitors made by your authority or theirs? A. We never made any authorization other than to meet the prices which we either knew or understood a competitor to be making.

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Q. Was that the policy that governed you throughout this period? A. Invariably.

Q. Do you know of any exceptions to that? A. No.

Q. Was there from 1903 to 1908 any contract system authorized by you or your associates or executive committee, or your board of directors, by which you intended to tie up the business of the country for the du Pont Powder Company? A. I know of no such authorization.

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Q. Or to tie up the business in black blasting powder? A. We tried to tie up our customers continuing our service to them; nothing else.

Q. And that in the usual line of contracts? A. Absolutely.

Q. Do you know of any system—my friend on the other side is constantly calling this thing a system—of making contracts that had such an object in view as tying up the trade of the black blasting powder? A. No, sir.

Q. Was there or was there not in the method of making contracts anything differing from what prevailed, so far as you know, in the business world among manufacturers? A. The method of making

5806

Jonathan A. Haskell—Recalled—Cross

contracts is common to almost all businesses, and, as I understand it, we pursued the policy which is very largely followed in contracting with our customers, either for specific amounts or their needs for certain operations.

5807

Q. What is the fact with reference to making contracts with contractors engaged in building certain things, like canals or railroads or any other thing that may last for a long period of time? A. It has always been the custom for contracts to be made for the explosives necessary for the prosecution of various pieces of contract work, and we have competed for that work and have had a large list of customers in it.

Q. And would those contracts generally be made at the request of the contractor or at the option of the Powder Company? A. Both parties wanted them. Sometimes they were very much more anxious than we, particularly at a time when prices were low.

5808

Q. Were there no requests that came to you from other customers, such as coal operators, for contracts for a period of time? A. I can recall no specific instances, although our branch offices manager reported at a time when no contracts were made, immediately after 1896, that a great deal of disquietude was present among the customers.

Q. On account of the suspension of the making of contracts? A. Yes, at that time.

Q. And I believe you testified that the suspension arose from the agitation of the silver question and other conditions that existed at that time? A. Yes.

Cross examination by Mr. Abbott:

Q. Referring to this matter of the contract system—I must persist in using the term regardless of

counsel—you state that the method which you followed was that which was followed in other lines of business, did you not? A. Yes.

Q. Do you know any other lines of business that makes exclusive contracts with its customers? (Objection sustained.)

Q. Do you know of any other line of business that requires its customers to buy all of a certain article it may purchase of it? A. Yes. The coal business very often makes a contract for all the coal to be consumed at a certain factory or certain factories. 5810

Q. Will you name one coal concern that does that? A. When I was in the coal business I did it very regularly.

Q. I do not doubt that, but I am speaking now of somebody else besides yourself, that would make contracts of that character? A. I have no personal knowledge of contracts being made by coal companies, because I am not in the active business.

Q. Now is it not a fact that the kind of businesses you have in mind is those businesses which are in the nature of combinations and large concerns, so-called "big businesses," that make contracts of that character, and have made contracts of that character? A. Absolutely no. 5811

Q. Then tell me some business that is not of that character? A. I have not any present knowledge of contracts being made either way.

Q. No, and you do not know of any concern that makes contracts with the rebate provisions in them, do you? A. Not for the moment.

Q. You said that you heard that Mr. Waddell, or, rather, the Buckeye Powder Company, was selling its nitrate of soda, at a certain time. When was that? A. Prior to 1907 and during the earlier part of 1907.

Q. Then it was during 1907 that you heard they

5812

Jonathan A. Haskell—Recalled—Cross

were selling nitrate of soda? A. That is my impression. I cannot recall the exact date.

Q. And it was then you ceased to have any interest in the Buckeye Powder Company's competition?

A. Yes, the price of powder had gone down to about a dollar, and the price of nitrate of soda had gone up considerably above two cents a pound, and I knew that from the fact that the nitrate of soda was being resold the Buckeye desired to do nitrate business more than powder business, and it was not worth while to consider their quotations at all.

5813

Q. You knew that it could not manufacture powder at the then price of nitrate of soda and sell it at the then prices of powder and live, did you not?

A. They could if they chose.

Q. You think they could have made money at 95 cents and paid the then prices of nitrate of soda?

A. 95 cents was then being made the price only in very exceptional cases. It was not the general price by any means, and they could have sold their powder and made a profit if they had chosen to do so.

5814

Q. You said that when you were a witness in this case before, and I am asking you now in regard to questions that have been put to you by counsel on the other side. The fact is, however, that at the then price of nitrate of soda it was impossible to make powder and sell it at a profit at 95 cents? A. Yes; but the Buckeye was not buying nitrate of soda. It had nitrate of soda which it had bought at much lower prices, at which it could make a profit.

Q. I understood that to be your answer. But exclusive of your conclusion in the matter my question is whether powder could be sold at a profit at 95 cents at the then price of nitrate of soda, regardless of the other conditions which you state in your answer? A. Under certain conditions, yes.

Q. Tell me what those conditions were? A. Provided the business was sufficiently close to the mill and a fair volume of output was maintained.

Q. But you think it would have been possible for a company to have manufactured powder and sold it in a normal, natural way, in the normal, natural market, and have made money at 95 cents? A. At that time the market was not normal.

Q. I am not asking you concerning normal conditions of the market, but concerning the normal trade that such and such a powder company would have had, if it could have reached that trade and make a fair price on its powder?

5816

Mr. Graham: This is not cross examination.

The Court: Yes; I think it is.

A. That is a negative question; I do not quite understand.

Q. I will state it again, so you may get my idea. In your judgment, could the Buckeye Powder Company have made powder at the then price of nitrate of soda and sold it at 95 cents, at a profit, anywhere within the district which it would have normally reached? A. If it had accumulated a near-by business, through having won the regard of its customers, and by making good powder, it could have sold trade near Peoria at the then existing price of nitrate of soda and made some money.

5817

Q. You think it could have done all those things and made a profit provided it could have sold it to a little nearby trade, where it could have carted; is that the idea? A. No; there is a large trade around Peoria.

Q. Then your contention is that if it had confined itself to a narrow area within which it could sell, without much expense in the way of freight, it

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Jonathan A. Haskell—Recalled—Cross

might have made some profit at 95 cents? Just answer that question yes or no, will you, and then explain it. A. I think it could have made some profit.

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Q. Do you wish to explain it? A. I would assume that if the conditions of the Buckeye Powder Company had been normal, it could have continued as an active business concern for the purpose of manufacturing and selling powder, when the 95-cent prices were being made by us and others in exceptional cases it would have possessed certain other trade at higher prices which would have enabled it to have manufactured at such a rate that it could have sold a portion of its output at 95 cents without loss.

Q. Now, having made that statement, will you tell me of something that you know of your own personal knowledge that the Buckeye Powder Company did at that time which was not in the line of manufacturing powder? Just tell me that, will you? A. Sold its nitrate of soda.

5820

Q. Anything else? A. It had accumulated a feeling on the part of certain buyers that its product was not as good as that of other companies.

Q. Do you know that? A. I do.

Q. Did you have anything to do with the making of that feeling? A. Absolutely no.

Q. I assume that is your position, but do you not know that there was a feeling stirred up and created through representatives of the du Pont Powder Company against the Buckeye Powder Company in just that way? A. I know of no such thing being done.

Q. You do not know of it. Is it not a fact that in the policy which you had pursued against the Buckeye Powder Company of forcing it down in making its prices until you forced it to sell its nitrate of soda at a time when you knew it could

not make powder at a profit at the price then prevailing, that that was why you ceased to have any further interest in the competition of the Buckeye Powder Company?

A. I cannot let go unchallenged the statement that the du Pont Powder Company forced the price of powder down, because that is not the case. The policy of the du Pont Powder Company, then, as it has always been, was one of defense, in retaining its own business. The price was forced down not by the du Pont Powder Company, but mainly by the competitors for business in that central territory, of which the Buckeye was one of the chief competitors in reducing prices. I answered the question as to whether we had treated the Buckeye any differently from others in the way I did because I felt that it had been less seriously considered during a large part of the time when I was in charge of sales. We felt that it really did not want to get customers, and it was perfectly useless for us to consider at all the quotations that were reported to us as having been made by the Buckeye Company.

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Q. Have you finished; is that all? A. I think I have answered the question.

Q. Now, I will ask you why it was that immediately after you found that the Buckeye Powder Company was selling its nitrate of soda in the fall of 1907 you raised your prices and then for the first time in the history of the du Pont Powder Company you made a special price, you made a regular price and published it to the world; why did you do that, when these other so-called independent companies were still in the field? A. The presence of the independent powder companies had nothing whatever to do with the advance in our price. The prices of black blasting powder had been forced down by quotations made mainly by

the Miami, as I recollect it, and the Buckeye, in the central field, and by other competitors all over the country. The price of nitrate of soda started to rise in 1906. I seriously considered recommending to our executive committee advancing the price in 1906. I was of the opinion that it should be done then because the outlook for the price of raw material for 1907 was still higher than for 1906. It was delayed because our salesmen, our sales managers who were consulted, practically without exception, said we would lose a very large proportion of the trade we then had if we advanced the price. It was only in the spring of 1907, May or June, as I recollect it, that we came to the conclusion that it was absolutely necessary that the price should be advanced regardless of whether our competitors followed us or whether we lost to them a considerable portion of our business; and we did advance our price. We published a price list, so that all of our customers could know what the prices were in their territory and any other territories.

Q. And from that time on that price list has been maintained, has it not? A. I believe it has. Several others have been issued.

Q. And the competition from these so-called competitors has continued right along, has it not? A. Yes.

Q. But you have managed to keep your prices up? A. Not in all cases.

Q. Is it not a fact that these so-called competitors immediately went to the prices which you had established in that price list, and have continued to maintain them, save in exceptional cases, ever since? A. I believe they advanced their prices to the same extent we did. I do not think they have maintained it since.

Q. But they have maintained it except in excep-

tional cases, have they not? A. Oh, they have deviated very considerably.

Q. Sometimes you have deviated, in exceptional cases, have you not? A. Surely.

Redirect examination by Mr. Graham:

Q. Mr. Abbott said you continued to keep these prices up, referring to the prices you mentioned, that were fixed in consequence of the conditions and the price of raw material. May I not ask you whether you did not continue to lose some of your business? A. I did not understand that question as you expressed it. He asked me if we continued to issue a price list. 5828

Q. No; if you continued to keep those prices up. A. The price lists had been issued from time to time, but they have been the maximum prices; special prices have been made all over the country and are today.

Q. State whether or not, as a consequence of these advances in these prices and this competition, you have gained or lost in business in black blasting powder. A. We have lost very considerably in our share in the volume of trade since the price list was issued in 1907. 5829

Recross examination by Mr. Abbott:

Q. I want to find out if you or any member of the powder company was an officer or a director in the Equitable, the Austin, the Egyptian or the United States Powder Company at any time. A. I think I am vice-president now.

Q. Of what company? A. Of the Equitable Company.

Q. You were a director also? A. I am a director.

Q. And Mr. Patterson was also a director in the Equitable? A. Yes.

5830

A. J. Moxham—Recalled—Direct

Q. And were you or any of the officers of the powder company connected with the Austin Company in any way? A. We have a director on the board. I do not know who he is.

Q. You cannot name him. How about the Egyptian Powder Company? A. We have never had any representation on the board of the Egyptian.

Q. But that is controlled by the Equitable. Now, how about the United States? Have you any control there? A. No.

5831

Q. I will now ask you whether the Egyptian Company, or the control of the Egyptian Company was acquired during 1907 or 1908? A. The control of the Egyptian was acquired some time during that period.

Q. Now, as to the United States? A. Mr. Olin, or the Equitable Company, have a minority interest in the United States Powder Company.

5832

Q. Are you or not an officer of the United States, or are any other officers of the powder company connected with the United States Powder Company as an officer or as a member of the board of directors? A. No.

A. J. MOXHAM, heretofore sworn, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Graham:

Q. What is your official relation to the powder company? A. I am one of the vice-presidents and a member of the board of directors and a member of the executive committee.

Q. The executive and administrative control of the company is in the hands, as I understand it, of the executive committee? A. Yes.

Q. Will you state whether or not you as an officer

and the executive committee of which you are a member, or the board of directors, have ever at any time exercised any control over the business policy or the making of prices and the sale of its products of any of the following companies? Equitable, Austin, Egyptian or United States Powder Companies; during the period of 1903 to 1909? A. The question is whether I have not—

Q. Or the executive committee or the board of directors, exercised any control over the business policy of these companies? A. Neither the board of directors nor the executive committee have ever done so, nor have I. 5834

Q. Was there ever any arrangement made or entered into by the board of executive committee, or by any of the officers of the du Pont Powder Company, by which the du Pont Company was to be compensated for any losses it might sustain in conducting any competition with any independent company during that period? A. May I have that question again?

(The question was repeated by the stenographer as above recorded). 5835

A. There was not to my knowledge.

Q. No action ever taken by the board or by the executive committee on that subject? A. None whatever that I know of.

Q. Was there any action taken by the board or the executive committee, or by yourself as one of the officers, or by your associates in the executive control or management of the company, of any kind directed against the Buckeye Powder Company as a competitor? A. None that I know of.

Q. No action by the board or the executive committee? A. There was no action by the board.

5836

A. J. Moxham—Recalled—Cross

Q. Was there any plan arranged or any scheme devised to contest the Buckeye Powder Company as a competitor? A. None whatever.

Q. Was there any different policy adopted as against the Buckeye by the du Pont Powder Company from that which controlled it in the general management of its business in relation to its competitors during that period? A. There was not.

5837

Q. Was there anything done, to your knowledge, having for its object the driving out of business of the Buckeye Powder Company? A. There was not.

Q. Was there ever, to your knowledge, any price fixed or authorized other than that which was necessary to meet prices which you had quoted against you by the competitors who were in this field? A. There was not.

5838

Q. Now, with relation to contracts, was there ever any system devised by you or the executive committee or by your officers, for the creation of a contract system for the purpose of tying up the trade in black blasting powder during that period? A. There was not.

Q. Were the contracts that were made different from what were the natural contracts to be made in conducting this or any similar business? A. No.

Cross examination by Mr. Abbott:

Q. Mr. Moxham, you know of an address which you delivered before the Association of Gunpowder Manufacturers on December 19, 1902, do you not? A. Yes.

Q. Nothing that you have said here today with regard to making prices or with reference to contracts is intended to contradict what you said in that report? A. No.

Mr. Abbott: That is all.

Redirect examination by Mr. Graham:

Q. That address, as I understand it, was made to the members of the Powder Association and not to the du Pont Company individually or in the management or control of its business, was it not? A. That is correct.

Mr. Graham: That is all.

Recross examination by Mr. Abbott:

Q. I will ask you whether or not shortly after that you did not increase prices and take other steps with reference to recommendations which had been made by you in that report, which action has since been followed and continued by the Powder Company? A. We did increase prices subsequent to that report. How far that was done exclusively as the result of that report I do not know. There were many arguments by many others bearing on that question at the same time; as to our policy then, covering a period of five years, I think there is no correlation whatever to the particular conditions governing us at the time the report was made, or to what influenced us at that time. Every month, every year, the varying conditions of trade called for varying treatment.

Q. You say that you think there is no co-relation, if I understand the word you used— A. (Interrupting) I think that was my word.

Q. —Between the system which you recommend at that time and what was afterwards followed, or the thing which your recommendation at that time covered and the things that were afterwards done by the Powder Company? Now, I will ask you to state, if you know—not what you think but if you know—of any change in any particular thing that

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A. J. Morham—Recalled—Recross

was recommended in that address at that time different from what you recommended? A. Everything, I think, excepting the advance in price.

Q. And in everything else there has been a change? A. Everything else was different. The recommendations of the report were very many things besides merely the advance in price. The advance in price occurred. The other things, so far as my memory goes, did not occur.

5843

Q. You continued to make contracts as recommended by that address, did you not? A. We have always made contracts, before and since.

Q. Very well. Then, so far as anything was said in that report in respect to contracts, that has been followed since the same as before? A. I think not.

Q. Tell me wherein it was different. A. The report, if my memory is right—and I am speaking entirely from memory, not having refreshed it recently—among other things recommended was a certain form of contract. Subsequent to that the forms of contract we made were manifold. There was no longer any one form but they were following the many different conditions of trade, as is always the case in all staples. The contract matter was governed by our customers rather than by us. Trusting to my memory once more, I recommended and very strongly urged that this advance in price, if it resulted in a condition of affairs that I hoped it would result in, should be followed by a still further advance. That did not occur. As I say, I think the subsequent period to the delivering of that address was correlated to that address only in the matter of the advance in price.

5844

Q. The policies, however, that you recommended in that address with reference to the increase in prices and of the continuance of a system of contracts according to certain plans which had been recommended in that address, have been continued,

have they not, by the Powder Company since that time.

Mr. Graham: I do not think there is any recommendation about the continuing of any system of making contracts.

The Witness: I would ask if I may be allowed to see that address, to see that contract.

Mr. Graham: Certainly; he has a right to see that.

5846

Q. You mean to see the speech? A. Yes, sir.

Mr. Abbott: Yes, sir. (Handing Plaintiff's Exhibit to the witness.)

The Witness: Is the form of contract recommended exhibited here—will you tell me?

Mr. Abbott: I beg your pardon?

The Witness: Is the form of contract as recommended in this address of mine on exhibition here?

Mr. Abbott: We have, Mr. Moxham, a large number of contracts—

5847

The Court: He means is it in this report?

Mr. Abbott: Oh, is it in the report?

The Witness: I would like to see it, if you can find it for me. It will save some time.

Mr. Abbott: What am I to understand?

The Witness: Whether there is any form of contract that I annexed to my address or report and whether it is on exhibition.

Mr. Abbott: That I am unable to say off-hand.

The Witness: May I have that again, please?

Mr. Abbott: Yes. I was going to make inquiry.

Mr. Graham: Look and see if there is any

5848

A. J. Moxham—Recalled—Recross

recommendation of any system of contracts in that report. I fail to remember it—either their form or recommendations.

A. (Continuing.) My report states:

5849

"It has been the general policy to cover the future demand by contracting for as lengthy a period as possible. There has been no universal policy adopted as to the form of contract. Various forms are in use. Disregarding minor details, the contracts may be divided into two classes:

"(A) Those selling on the basis of a card rate, subject to change, from which basis the necessary deduction or concession is made. These contracts permit of a change in price.

"(B) Those selling at a fixed price, which is a basis for the rebate. These contracts permit of no change in price.

5850

"In addition to the trade covered by contract, there is the trade covered by special price. This trade also permit of a change in price." I think that confirms my previous memory of the matter. We may perhaps have endeavored to work up some form of contract, to work to some standard; but whether we did or did not try to, we certainly did not do it.

Q. As I understand it, that portion of the speech which you have just read is correct, and that that was followed in the subsequent policy of the du Pont Powder Company, that portion of it, regardless of the form, Mr. Moxham? A. I have every reason to believe that the statement I have just read in that address is correct. As I have stated, it was not followed. We tried to but we could not.

Q. Now, will you state in what respect it was not followed? A. As I stated before, I think in no respect was it followed.

Q. I am asking now as to that particular portion of the speech which you have just read, where you said that your policy was to tie up the trade as much as you could by making these contracts—whether that policy has been followed.

Q. Will you point out what it was you read, so I may know what it was? A. (Pointing out on Exhibit): "Effects of existing contracts."

Q. This is the part that I had in mind (reading): "It has been the general policy to cover the future demand by contracting for as lengthy a period as possible." 5852

Q. Was that policy continued or not? A. I would be inclined to say it was, so far as it could be done.

Q. Yes—A. (Continuing): Will you please let me finish? Our customers wished—and it was convenient and cheaper for us, to sell on that contract basis.

Q. But regardless of what was the reason for it, you did continue that policy, did you not? A. We have always continued the policy of selling as our customers wished. 5853

Mr. Abbott: That is all.

PIERRE S. DU PONT, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Graham:

Q. Mr. du Pont, you have been sworn heretofore? A. Yes, sir.

Q. I do not know whether you have stated your official relationship to the du Pont Powder Company. Will you kindly state them, preliminary to

5854

Pierre S. du Pont—Recalled—Direct

my questions? A. I am treasurer of the company and a member of the executive committee and a member of the board of directors?

Q. You are part, then, of the administrative and the executive organization of the powder company?

A. Yes, sir.

5855

Q. Do you know, so far as you are concerned as an officer, so far as the executive committee and directors are concerned, whether or not there was any control exercised by you or by your executive committee or you board of directors over the business policy of affairs of the Equitable, Austin, Egyptian or United States Powder Company? A. There was not.

Q. That is during the period from 1903 to 1909. That is the period to which my question relates? A. I understand.

5856

Q. Was there ever any arrangement entered into by you or your associates or either of these two bodies—the executive committee or board of directors—through which the du Pont Powder Company was to be compensated for any loss it might sustain in conducting competition against any competitor? A. No, there was not.

Q. Therefore, of course, you never received any such compensation? A. No.

Q. Was there anything, to your knowledge, done by the board or by the executive committee or by your associates in the executive and administrative control of this company to drive the Buckeye Powder Company out of business? A. No, nothing.

Q. Did you adopt any policy or plan of operations against this Buckeye corporation? A. No.

Q. In the matter of making prices, what was the policy of your executive committee with regard to making any reductions in prices? A. We believed that our reductions, if necessary at all, were not

such as would more than meet competitors' prices, and we felt that we were able to get a better price than our competitors, and therefore it was unnecessary to go below their figures.

Q. In other words, you had confidence in the established reputation of the du Pont powder, so that you felt you could meet competition on an equal footing? A. Yes.

Q. Do you know of any instance at all where the price was cut below what you understood the price quoted against you by some competitor? A. I know of none, no. 5858

Q. And this, as I understand it, was done in order to try to retain your own business? A. I do not understand the question.

Q. I say this was done to retain your business in the black blasting powder trade? A. What was done?

Q. The authorization to meet prices, to meet quotations? A. Yes, surely.

Q. Now, with relation to the matter of contracts, was there any system of contracting created or devised and put in operation for the purpose of tying up the trade in black blasting powder? A. No, there was not. 5859

Q. Was there any other method of making contracts than that which the demands of the business naturally required? (Objection overruled.) A. No, there was no regular system of making contracts. We made contracts if it suited the convenience of our customers and ourselves, at prices and on terms that met the conditions at the time of making the contract; but there was no specified system of contracts.

5860

*Pierre S. du Pont—Recalled—Cross**Cross examination by Mr. Abbott:*

Q. Was there a regular method adopted, or was there not, of providing for rebates in these contracts? A. Not that I have in mind, no. There may have been but I do not know about it.

5861

Q. Have you any contracts in mind for which there was any rebate provided for according to a regular form or a regular plan? A. I could not say whether they were under a plan or whether they were rebates.

Q. Well, I will ask you whether or not a man who got 1200 kegs was not entitled to a certain rebate and a man who got 2500 kegs was not entitled to a certain other rebate, and so on, up, say, to ten thousand kegs. Did not each one of those men have a certain fixed rebate which you allowed? A. I cannot state that. It may have been so.

5862

Q. Was there not a regular plan used in all of these contracts requiring the person with whom you made the contract to buy powder of you exclusively for his uses? A. In all of our contracts the provision was to meet the requirements of the customer for the period under contract.

Q. For all he used while under contract with you? A. Yes.

Q. You say you do not know of any cuts which were made or any prices which were made which were at a less price than those which were made by competitors. I will ask you whether or not such prices might have been made without your knowledge? A. They might have been, yes.

Q. I will ask you about those companies you spoke of. I don't want to be repeating, but you have heard the testimony and have heard the cross examination in regard to the interest the du Pont Company has in the Equitable and the Austin Companies? A. Yes.

Q. Is that correct? A. Yes, that is correct. About 25 or 30 per cent. in the Austin and 49 per cent. in the Equitable.

Q. And also that the Equitable is the owner of the Egyptian plant and has an interest in the United States Powder Company's plant? A. My recollection is that it has 25 per cent. in the United States and the controlling interest in the Egyptian.

Redirect examination by Mr. Graham:

5864

Q. Is Mr. Patterson in this country or abroad? A. He is abroad.

Q. Mr. Alfred I. du Pont, the other remaining member, is afflicted with great deafness, is he not? A. Yes.

Q. And is it not almost impossible for him to hear and does he not have to use instruments to facilitate his hearing even in conversation? A. Yes, sir.

Q. And those are the only two remaining members of the executive committee? A. Yes.

Q. The only two that have not been called? A. Yes.

5865

Q. Now, about the rebates Mr. Abbott spoke of, there was in some of these contracts a rebate based upon quantity. First I want to ask you whether there was any secret about that; or whether it was spread out in the contract.

A. I know of no secret rebates.

Q. Was that method of charging a certain price and then depending upon the quantity whether it was a wholesale or retail price, allowing a certain rebate or discount or whatever you choose to call it, abandoned about 1905? A. It had been abandoned, but I don't know when.

Q. Well, it has been for several years abandoned; it has been abandoned for a number of years, has it not? A. I am uncertain that that practice was ac-

5866

Pierre S. du Pont—Recalled—Recross

tually in force. I have no knowledge of that subject, if it did exist.

Q. And the charge is made at a flat rate for the powder? A. Yes, sir.

Recross examination by Mr. Abbott:

5867

Q. I will ask you whether or not there is a provision in the contracts, which are made by your company, or a very large portion of them, similar to the following: "The terms as well as the existence of this contract shall be confidential"? A. I don't remember that appearing on a contract.

Q. You say you do not remember. The contracts, then, will speak for themselves.

Mr. Graham: None of the recent contracts has any such provision as that in it.

Mr. Abbott: We have some in evidence that have that in them.

Mr. Graham: Well, they are in evidence and will speak for themselves.

5868

Q. I would like to inquire whether or not the executive committee, which has been referred to here, has absolute exclusive control over the affairs of the sales board of the powder company? A. Yes.

Q. Does it take cognizance of the affairs of that board from day to day and direct its business, or does it only consider such matters as are occasionally referred to it for determination? A. The executive committee lays down a broad policy for the sales board to follow and the sales board, on its part follows that policy and brings to the executive committee the exceptions it wishes to take for consideration.

Q. But the executive committee does not have actual knowledge from day to day of the detailed workings of the sales board? A. No, they do not.

Pierre S. du Pont—Recalled—Recross
John T. Barron—Direct

5869

Redirect examination by Mr. Graham :

Q. But they are required to bring before your executive committee any exceptions they desire to make to your general instructions? A. Yes, sir.

Mr. Graham : That is all.

Mr. Abbott : That is all.

5870

JOHN T. BARRON, called as a witness in behalf of the defendant, being first duly sworn, testified as follows :

Direct examination by Mr. Button :

Q. Where do you reside? A. In Chicago.

Q. Have you been in the powder business for some years past? A. Since 1882.

Q. During the years 1903 to 1909 what was your relation to the powder business? A. I was the western manager of the American Powder Mills, a Boston corporation.

5871

Q. Did you have an office in the West some place—headquarters? A. Headquarters for the West were in Chicago. We also had branch offices under the jurisdiction of the Chicago office.

Q. Were you engaged in the sale of black blasting powder during those years? A. I was.

Q. For the American Powder Company? A. Yes, sir.

Q. And also a sporting powder for that concern? A. Yes, sir.

Q. Did you sell the black blasting powder throughout the States of the Middle West? A. Yes, sir. From practically west of Pittsburgh. Very

5872

John T. Barron—Direct

little in Ohio and Indiana; more largely west of the Mississippi River.

Q. Did you sell any in Illinois? A. Yes, sir.

Q. And in Iowa—— A. Yes—some.

Q. Where was the powder manufactured which you sold? A. The greater part of it was manufactured at Xenia, Ohio, by the Miami Powder Company. And also at Fayville.

Q. That is the Miami and American Companies have always been associated in ownership, have they? A. Yes.

5873

Q. Was the black blasting powder sold by the American manufactured largely by the Miami Company? A. Yes.

Q. During this period was the Buckeye Powder Company in operation, for part of this period? A. Yes, sir.

Q. Were you in competition with that company? A. Yes, sir.

Q. Did you have various salesmen under you there? A. Yes, sir.

5874

Q. Did you solicit the trade generally throughout that territory? A. Yes; in 1903. We were very active in our solicitation then.

Q. Mr. Waddell's enterprise began about the fall of 1903. Can you state in a general way, from that time down to the latter part of 1908, what companies you came in competition with in that territory? A. The du Pont Company, the Equitable Powder Manufacturing Company, the Egyptian Powder Company, the Austin Powder Company.

Q. The United States? A. The United States Powder Company. The Excelsior Powder Company I believe was in operation during that period.

Q. Did you mention the Equitable? A. Yes.

Q. How about the King Powder Company? A. We did not see much of King in our territory.

Q. The Senior? A. The Senior.

Q. Did you mention the Burton Company?

The Court: Not yet.

A. No. The Burton was not active in the territory in which we operated.

Q. Were all of these companies competing against you at that time? A. Yes, sir.

Q. And you against them? A. We against them.

Q. Was there any time during that period when the American Powder Company was not actually selling its product in those States? A. No, sir. 5876

Q. Was there ever any time in which the American Powder Company withdrew from those States and left the business to the du Pont Powder Company? A. No, sir.

Q. Was there ever any arrangement whereby the du Pont Company was to exclusively have the trade there, so far as the American was concerned? A. No, sir.

Q. No arrangement of that sort? A. No arrangement whatever.

Q. Of course, then, there was no arrangement as to your company compensating the du Pont Company for any losses, in whole or in part? A. No, sir. 5877

Q. Was the competition active and fierce during a portion, at least, of this period? A. Competition, as I recall it, the latter part of that period, commencing with 1904, was very keen.

Q. Did your company have an office also at St. Louis? A. Yes, sir.

Q. And Kansas City? A. We had an office at St. Louis and sub-agencies in other points. We had one at Keokuk, Iowa; one at Omaha, one at Denver.

Q. St. Paul, did you mention? A. We used St. Paul as a distributing point, but did not maintain an office there—had our magazines.

5878

John T. Barron—Direct

Q. What was the result of this competition on prices during the years 1904, 1905, 1906 and 1907?

Mr. Abbott: I would like to have the witness understand that he is to testify only from his personal knowledge—any prices which he knows of personally.

The Court: That is understood.

5879 A. As I recall it, commencing with the last half of 1904, the prices commenced to reach a lower level. The market was declining, and there did not seem to be business enough to keep the mills going. It was simply a fight for every piece of trade we could get.

Mr. Button: That is all.

Cross examination by Mr. Abbott:

Q. What relation did you say you sustained to the American Powder Company? A. I was its Western manager.

5880

Q. By Western manager, what territory did you cover? A. I covered everything west of the New England States, and also the South.

Q. Then these branch offices you speak of, in St. Louis and other places, were under your control? A. Under my control.

Q. How many customers did you have for black blasting powder in the State of Ohio during the years from 1903 to 1909? A. I cannot answer that question.

Q. Can you not give it approximately? A. Very few. I should say probably three or four.

Q. How many did you have in the State of Illinois? A. Practically the same number.

Q. And how many in the State of Missouri? A. In Missouri, eight or nine probably.

Q. How many in Iowa? A. Nine or probably ten.

Q. That would make all told about 25 or 30 altogether, in those four States? A. Yes.

Q. You say there was very active competition between yourself, between your company, and the du Pont and other companies. What do you mean by active? A. I mean that we not only tried to hold our own, but we tried to take customers at the expense of any powder company that was in the business.

5882

Q. Yes; that is true; but I want to know how you went about that. Tell me what the activity was, what were the things you did? A. I would explain it in this way: That if we found a man was in the market for powder we would attempt to get the order. We would attempt to find out the price that prevailed, that he was quoted by any other company, and if we could get the business at the same price we would take it, and if it was possible to get it at a little lower price it was put up to me, and I had to use my best judgment as to whether we would make such price.

5883

Q. Do you know of any instances in which you made a lower price than any of your competitors? A. I know of instances where we had to cut the du Pont price.

Q. Well, give me some of those instances. A. I am speaking now from memory. I cannot recall the names.

Q. I do not want you to say you did unless you do know of some cases. If you have only a general recollection— A. Yes; I recall one case, the Northwestern Improvement Company, of Red Lodge, Montana, where we cut the du Pont price.

Q. What was the price they made at that time? A. Of course, I could not say. My information is based on what our customer would tell us.

Q. Well, what was the information you had, then, as to their price? A. As I recall it, our price

Q. Not your price, but theirs. A. Oh, their price?

Q. Yes. A. As I recall it, their price was about a dollar a keg at Chicago rate point, but I think we cut the price two or three cents a keg, enough to turn business our way.

Q. Can you give another case? A. That is all I have in mind just now.

5885

Q. When did you say this competition between the American Powder Company and the du Pont Powder Company began? A. The competition between the du Pont and the American Companies has gone back for years.

Q. Well, tell me how far back. A. Very active prior to 1896.

Q. Yes—— A. Not so——

Q. Pardon me; were you the agent at that time?

A. Yes, sir.

5886

Q. All right. A. Not so active for the next six or seven years. That would carry us to 1902.

Q. Then after that? A. After that very active.

Q. What was the reason for the inactivity which you refer to after 1896? A. After 1896 all the business of the country was tied up, under contract.

Q. How? A. By the different powder people. They had their own customers. They controlled that trade. I am speaking now of 1896.

Q. Yes, 1896. A. And to get business at that time, it was rather difficult.

Q. Is it not the same system of tying up the business under contracts that is in use today? A. No, sir.

Q. Are there no contracts made now the same as before? A. Yes, sir, at that time I would explain the contracts were rather peculiar ones, they

were based on the quantity of power the man would take, I recall, if he required a certain number of kegs, why he got a certain discount and he could not very well violate one of those contracts.

Q. Tell me why it was from 1896 down to 1902 you did not compete with each other? A. We were competitors, but the competition was not as keen as it was after that time.

Q. Is it not a fact that during that period there was an association of powder manufacturers of which the American was one of the members, and that that is the reason you did not compete—because you agreed among yourselves as to the division of the business? A. After 1896?

5888

Q. After 1896. Now, is it not a fact that that association continued down to June, 1904, that same arrangement continued? A. Well, I would not know the exact dates, as to the expiration of those agreements.

Q. Is it not a fact also that after 1904 the Miami Powder Company—do you know anything about the Miami Powder Company? A. Yes; I am on the same floor and have a talking knowledge and I am connected with the Miami today.

5889

Q. These companies, the American and Miami, are known as the Fay companies, are they not? A. Yes.

Q. And you are representing Mr. Fay? A. Yes, sir.

Q. Do you not know that after 1904, after the association was dissolved, there was an arrangement made between the Miami and the Aetna and the American Powder Companies on the one hand, and the E. I. du Pont de Nemours Powder Company on the other, whereby the trade between those two companies was allotted, and that that arrangement continued for a certain period, down into 1905? A. I know of the Sullivan agreement. But

5890

John T. Barron—Cross

my recollection is that it did not relate at all to black blasting powder.

Q. Oh, it had no relation to black blasting powder at all? A. Absolutely not.

Q. It represented the Miami and the American companies, did it not? A. Well, it represented them in this way. That the three companies were known as the Fay Companies, but my recollection is that there was no mention whatever of black blasting powder in that Sullivan arrangement.

5891

Q. Very well. Then the agreement, whatever it was, will speak for itself, and your recollection is it related only to dynamite A. Yes, sir.

Q. However, there was an arrangement made? A. The Sullivan agreement was made.

Q. And that agreement continued until what time, according to your recollection? A. I think nine months; I am not positive as to the date of that.

5892

Q. Prior to the time that that arrangement was concluded, in the spring of 1905, what was the condition of your competition, as you call it, between the Miami, the American and the du Pont Powder Company? A. I could only speak for the American at that time.

Q. Oh, yes? A. As I recall it, the Sullivan agreement had no effect. (After argument.) (Continuing) : In so far as the American's business was concerned. We put forth every effort to get business prior to the time you mentioned.

Q. Do you mean from 1902 to 1905? A. Yes, sir. We had men in the field all the time.

Q. Then you did not regard the agreement or arrangement which you had with the Powder Association which was then in existence? Is that right?

Mr. Button: During which period?

Mr. Abbott: From 1902 to 1904, when it was formally concluded.

The Court: He answered from 1902 to 1905.

Mr. Abbott: Counsel has asked me between what periods this Association was in existence. The Association was in existence formally down to June, 1904. After that it was the Sullivan agreement. Now I am going to separate it and take the Association first, and then after that I will take up the Sullivan agreement.

5894

The Court: You may separate it, but the witness is answering as to the other period I have named. Proceed.

Q. Then I will ask you whether during the time of the continuance of the Association from 1902 down to June, 1904, whether your competition was just the same as it was after 1905, when the Sullivan agreement was cancelled? A. Our solicitation for business, I think, during the period you have mentioned was quite as active before and after. I received instructions to sell powder previous to the cancellation of the agreement. Our sales had fallen off very materially. In 1896 the American Powder Mills found themselves with very little blasting powder business and we remained rather inactive, as I recall it, for a period of five years.

5895

Q. Now, then—

Mr. Button: Let him finish.

A. After that Mr. Fay, L. A. Fay, who was then president of the company, gave me instructions to build up a black powder business. I am not quite

sure as to dates, neither am I as to years; but I am approximately correct. I am quoting this from memory. I say from 1902 to 1904 our efforts were quite as active as they were after 1904.

(Motion to strike out the answer overruled.)

Q. Then, during the time from 1902, after 1902, your company disregarded its arrangements with the Gunpowder Trade Association and the other members of that association? (Objection overruled.)

A. My understanding of the arrangement under which the companies were operating previous to the cancellation of these agreements was that the American should receive a certain sum for its under-sales. We were not manufacturers of blasting powder, and we found ourselves in 1896 in a rather peculiar position, without business— (After argument.) A. (Continuing)—without business, and the arrangement by which companies who had two years previous to 1896 controlled trade would have the right to make special prices. That curtailed our efforts, and we went along to probably 1902 and received a sum of money for our under-sales. Mr. A. L. Fay, as president, gave instructions to me that we must go in and sell powder, that the time had come when he did not think it wise to continue to receive this money. In other words, that we should create and maintain a position in the black powder business. The result was that we made an effort to get business.

The Court: This is during what period?

The Witness: This was after 1902.

The Court: That is not really an answer

to the question. The question turns on whether you disregarded the arrangement.

The Witness: The disregarding of the arrangement would be this, during this period, if the American Powder Mills did not sell any powder—its allotment was fixed, and it received a certain sum of money for not selling. They were free at any time to go out and sell. For every keg they sold the amount received was reduced just to that extent.

5900

The Court: The question is whether you disregarded the arrangement of 1896.

The Witness: We were free at any time to sell.

The Court: Well, did you disregard the agreement; you did or did not.

The Witness: We had no agreement not to sell.

The Court: The question is whether you disregarded the agreement of 1896.

The Witness: Well, we did not disregard it. We did not.

5901

Q. And you did not disregard that after 1902, did you, down to the time when it was dissolved? A. No, we did not.

Q. That is the point I was trying to get at. You simply went out for business? A. Yes.

Q. And then you made an accounting for under-sales or over-sales on the same basis as you did before? A. Yes.

Q. You wanted more business, and that would simply change the relation of your under-sales and over-sales? A. Yes, sir.

Q. That is it exactly. Who were the three customers that you had in the State of Ohio during

5902

John T. Barron—Cross

this time you stated you had customers there? A. I cannot recall them.

Q. Not at all? A. No.

Q. Who were the three, or any of the three—I believe you said there were three—in the State of Illinois? A. Without consulting the records I could not say.

Q. Well, it being a matter on which you are testifying— A. (Interrupting) We had one old customer there, James Donn.

5903

Q. When did he become a customer of yours first? A. Oh, probably thirty years. We had a cement company at Utica, Illinois.

Q. What was the name of that company—the Utica Hydraulic? A. No; I think the Illinois Hydraulic.

Q. By the way, when did that company become a customer of yours first? A. I could not say.

Q. Can you not give approximately the year? A. The Illinois Hydraulic was a customer of ours probably, I should say, in 1900.

5904

Q. Give us the next one. A. We had a customer at Streator—F. H. Eads.

Q. When did he become a customer? A. He was a customer for twenty or thirty years.

Q. Now take some of those in Missouri. Give us the names of some of your customers there. A. The Witte Hardware Company.

Q. When did that first become a customer? A. They were very old customers, for years back.

Q. About how old? A. On the books probably thirty years.

Q. Give us another customer in that same State. A. The Simmonds Hardware Company.

Q. When did the Simmonds Hardware Company become a customer of yours? A. About 1900.

Q. Give us another one. A. A customer in Novinger, Missouri. I cannot recall the name.

Q. Was it Raumbauer? A. No.

Q. The Great Northern Fuel Company? A. No; I think the name was Brown, as I recall it.

Q. Now when did he become a customer of yours? A. About 1902, I think.

Q. Now give us another one? A. I cannot recall any others.

Q. Can you give me the names of some customers in Iowa? A. The Brown-Camp Hardware Company.

Q. And when did that company become a customer? A. In 1904. 5906

Q. Give me another one in Iowa. A. The Luthy Hardware Company.

Q. When did that become a customer? A. About the same year, 1904.

Q. What time in 1904? A. I could not give the date.

Q. Was it in the spring or fall? A. I could not even say that; but it might be 1903.

Q. Give me the name of another customer in that same State. A. The Blom Colliery Company—Keokuk, Iowa. 5907

Q. When did they become a customer of yours? A. That dates back to about 1900.

Q. Another one? A. Woodruff Brothers, Knoxville, Iowa.

Q. When did they become a customer of yours? A. Very old customers; probably 1895.

Q. Could you give another one? A. National Union Hoe Company, at Albia, Iowa.

Q. When did they become a customer? A. I think in 1905.

Q. What time in 1905? A. I could not say.

Q. Was it the spring or the fall? A. I could not say.

Q. Now give us the name of another one. A. The Back Coal Company, at Des Moines.

Q. When did they become a customer? A. About 1906.

Q. Give us the name of another one. A. Madison Coal Company.

Q. Where are they located? A. At Des Moines.

Q. When did they become a customer? A. 1907.

Q. Give us another customer. A. The Greenwich Fuel Company.

Q. Where located? A. At Greenwich, Iowa.

5909 Q. When did they become a customer? A. In 1907.

Q. In regard to the Madison Coal Company, I want to ask how long did they remain a customer of yours? A. I think we held them about a year.

Q. That company was before that a customer of the Buckeye Powder Company, was it not? A. No. I thought we took the business from the du Ponts.

Q. You are not sure about that? A. Yes, I think from du Pont; I would not be sure without examining my records; I could not say.

5910 Q. Have you recalled all you can in the State of Iowa? A. All I can quote now from memory.

Q. As I understand it, then, all of the customers whose names you have enumerated here were customers which you had, prior to the time when the association went out of business? A. Yes.

Q. You made contracts from time to time with these various customers, did you not—some of them? A. Yes, sir.

Q. And you renewed these contracts from time to time? A. Yes, sir.

Q. You had an agency one time in Peoria? A. Yes, sir.

Q. When was that agency discontinued? A. I think the agency was discontinued in 1904.

Q. Are you sure it was not 1903? A. I am not sure. Possibly it was 1903.

Q. Who was your agent there at that time? A. A. H. Barnewald.

Q. It is a fact, is it not, that you discontinued that agency in 1903? Can you not refresh your memory sufficiently to testify on that point? A. No. I would not be sure of that. When I say 1904, it is more or less of a guess. It might be 1905 or 1903.

Q. You have bought powder of a company known as the Western Powder Company, have you not? A. Yes.

5912

Q. You spoke about some of these companies that were in competition with you, and among others you mentioned the Burton Powder Company. Now, when did the Burton Powder Company enter the field, if you know? When did it begin manufacturing powder in that district?

The Court: He said the Burton was not active in his territory.

Mr. Abbott: I know he said it was not active, but it has been given in one of the lists here and I wanted to find out from the witness when it was that the Burton Company entered the field, if he knows. Of course, if he does not know——

5913

The Witness: No, I cannot answer that.

Q. Do you know when your competition with the Egyptian Powder Company, as you call it, began—what year? A. I think in 1903; but I am not sure.

Q. How long did it continue? A. The competition is still in existence with the Egyptian.

Q. Do you know of any customer of the Egyptian Powder Company with whom you came in contact during this period from 1903 down to 1909? A. We took the O'Gara Coal Company from the Egyptian, I think, in 1909.

5914

John T. Barron—Redirect

Q. In 1909? A. I am not positive as to that.

Q. Give me one now previous to 1909. A. That is the only customer I know of that we took from them. When I speak of the O'Gara—there are three or four interests. It means three or four other companies.

Q. That is, the O'Gara Coal Company, with headquarters at Chicago? A. Yes, sir.

Mr. Abbott: That is all.

5915

Redirect examination by Mr. Button:

Q. You stated that this Montana business took a dollar price from the du Pont Company, according to your understanding, with a Chicago rate? Does that mean the freight rate? A. Yes; the freight rate.

Q. That is, the customer paid the freight from some Chicago point? A. Some Chicago point.

5916 Q. In regard to your sales in these Western States, in the Middle West, could you give us approximately the number of kegs that your company sold during the years 1904, 1905, 1906, 1907 and 1908? A. Yes, sir. Can I read it from a memorandum?

Q. Do you know these figures to be correct? A. I know them to be correct.

By Mr. Abbott:

Q. Something you have personally checked up yourself? A. Yes; from a memorandum I kept myself, from records that were made there, through office men.

The Court: What period is that?

Mr. Button: From 1904 to 1908, each year, I think, as I understand it.

The Witness: I have it from 1903.

By Mr. Button:

Q. Then give it from 1903, then. A. In 1903, 258,000 kegs.

The Court: Of black blasting powder?

The Witness: Black blasting powder. In 1904, 172,000 kegs; in 1905, 206,000; in 1906, 261,000; in 1907, 248,000; in 1908, 252,000 kegs.

Mr. Button: That is all.

5918

Recross examination by Mr. Abbott:

Q. Where was this powder manufactured that you have just given a memorandum of? A. At Xenia, Ohio.

Q. That is the Senior Powder Company? A. No, the Miami Powder Company. And at Fayville, Illinois.

Q. What company there? A. The Miami Powder Company. The Excelsior Powder Company, at Kansas City. I am not quite sure as to whether we took any from the Western Powder Company, at Peoria, in 1908.

5919

Q. How many kegs did you buy of the Excelsior Powder Company during this period? A. I am not quite sure as to that. We made a contract with the Excelsior and I think it covered part of the year 1908. I am not positive as to that.

Q. This is the same Excelsior Powder Company that you spoke of a while ago as being one of your competitors? A. Yes, sir.

By the Court:

Q. Let me ask you: Did these sales cover simply American Powder Mills Company's sales? A. Yes, sir.

5920

Samuel Rand—Direct

Q. Did you get your powder from different mills?

A. Yes.

Q. The Miami? A. The American made only sporting powder at their mills at Boston and Mr. Fay was president of the Miami and the American and the Miami undertook to supply us with the blasting powder that we required. Conditions then prevailed by which they could not—we sold more than they could produce and then we went to the other companies like the Western and the Excelsior and had them make it under our brand.

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Q. Did you go to the Excelsior before 1908? A. I think in 1908 we did.

By Mr. Abbott:

Q. Did you buy powder of the Western Powder Manufacturing Company? A. Yes, sir.

Q. When did you begin buying that? A. I am not sure as to the date or the year.

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Q. The Western Powder Manufacturing Company is the one that succeeded the Buckeye Powder Company at Edwards, Illinois? A. Yes, sir.

Q. How was that powder shipped? (Objection sustained.)

SAMUEL RAND, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Mr. Rand, where do you reside? A. At Birmingham, Alabama.

Q. Are you in the powder business? A. Yes, sir.

Q. How long have you been in the powder business? A. About 28 years.

Q. Have you owned and operated various plants during that period? A. Yes, sir.

Q. During the years 1903 to 1908, what plants did you operate? A. I operated a plant at Fairchance, Pennsylvania, from the year 1900 to 1905, and from 1905 to 1908 I operated a plant near Knoxville, Tennessee, at Marlow.

Q. What was the name of the first company, at Fairchance? A. The Rand Powder Company.

Q. And what was the name of the second one, in Tennessee? A. The Rand Powder Company of Tennessee. 5924

Q. The Fairchance plant blew up in 1905, did it? A. Yes, sir.

Q. Was destroyed by an explosion? A. Yes, sir.

Q. About what time in 1905? A. It was on the 9th of September.

Q. Did you construct a plant in Tennessee yourself? A. Yes.

Q. Had you begun that before the explosion in Fairchance? A. We were just beginning to manufacture in Tennessee.

Q. So your sales of powder were practically continuous, despite the explosion, were they? A. Yes, sir. 5925

Q. Did you sell powder in Ohio and Tennessee and West Virginia, from one or both of these plants during this period? A. Yes, sir.

Mr. Abbott: What powder?

Mr. Button: I asked him if he sold powder in Ohio, West Virginia and Tennessee.

Q. Can you state what other powder companies were selling in competition in those States during that period? A. During our operations in Pennsylvania, our competition was from the du Pont Powder Company, the Austin Powder Company, the

Senior Powder Company, and I think it is the Cresson Powder Company; the Burton Powder Company in the last year, during 1905, and the Egyptian in 1905. I think that was all.

Q. That was in the Fairchance plant? A. Yes, sir.

Q. How about the later period when you were running the Tennessee plant, with whom did you come into competition? A. We came into competition with the du Pont people, the Senior Powder
5927 Company and slightly with the Austin people, the Austin Powder Company. I think that was all.

Q. What were the capacities of those two plants of yours respectively? A. The capacity of the Fairchance when it was first built was 500 kegs.

Q. 500 kegs a day? A. Yes. And it was increased in the year 1902, I think, to about 1,000 kegs.

Q. And the Tennessee plant? A. And the Tennessee plant was 500 kegs originally, and that was increased to 850 or 900 kegs in 1907, I think.

Q. During this period have you been actually engaged yourself in the manufacture of powder? A.
5928 Yes, sir.

Q. And still are engaged in it? A. Yes, sir.

Q. Are you familiar with the uses of black blasting powder and the requirements of its manufacture? A. Yes.

Q. How many different sizes of grains ordinarily are manufactured for coal mining use? A. Usually about five different grains.

Q. How are they designated? A. They are designated under the name of C, which means coarse. They do make a double C, but it is seldom used in coal mines. I do not know that it has ever been used. And the next finer grain from a C is F, and it runs FF, FFF and FFFF, the FFFF being the finest.

Q. What is the effect of the size of the grain upon the explosion of the powder? A. The finer the grain, the quicker the powder.

Q. It explodes quicker when it is finer, does it? A. Yes.

Q. What would you say as to the effect of mixed grains, different sized grains, in a keg of powder, that is used in blasting operations? I will put it this way: If you loaded a shot with a certain amount of C powder, CC, and another shot of the same sort and load it with a powder which would be C mixed with finer grains, what would be the relative result of those operations? A. The powder of the same size would burn uniformly and the powder with different sized grains would not. The smaller grains would burn before the larger grains.

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Q. And what would be the result of the moving of the coal, or whatever was being blown up? A. There would be several effects.

Q. Won't you explain in your own way? A. In a coal mine?

Q. Well, yes, put it in a coal mine. A. In a coal mine, it is apt to blow the tamp. The burning of the small grains first does not create a uniform pressure on the material which is to be moved, and naturally, the result would be sometimes the blowing out of the tamping, as it is called.

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Q. That is, the result would be, not so much pressure on the coal? A. Not so much pressure, not a uniform pressure.

Q. And you say it would have a tendency to blow out the tamping from the end of the hole? What effect would that have upon the blast? A. That would tend to make what is called a windy shot, that is, they claim the powder would be thrown out in the mine, and that is considered very dangerous on account of it igniting the gases which sometimes exist under ground.

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Samuel Rand—Cross

Q. And of course the effect of such a shot on the coal would be small, would it not? A. Yes; when it blows the tamping, the coal is hardly disturbed.

Q. And those results do not occur if the powder is of a uniform grain? A. They are not so apt to occur. They do occur.

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Q. Therefore, what would you say from your experience of the desirability of a mixed grain of powder in coal mining operations? A. It is considered dangerous to use grains which are not uniform in size. It is more dangerous to do that than to use grains of uniform size.

Q. And more ineffectual, too, is that correct? A. Yes, sir.

Cross examination by Mr. Abbott:

Q. Mr. Rand, did you ever see a keg of C powder that was all of the same size? A. No, sir.

Q. Now, is it not a matter of fact that all grades of powder are more or less mixed? A. Yes.

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Q. So that in C powder are some grains small enough to be marked as one of the Fs? A. Yes.

Q. And is it not a fact that that applies to every make of powder, whether it is made by the du Ponts or any other company that makes powder? A. Yes, sir.

Q. Has it not been a matter of considerable difficulty and experience on the part of manufacturers of powder from the beginning of time since powder was made, to get powder as uniform as possible, and have they not as a rule failed to accomplishing that completely? A. It is a difficult matter to do it.

Q. You state that there is a C and a double C. Did you state that there were any other Cs? Is there still another C? A. I do not believe I have ever manufactured anything coarser than CC.

Q. There is what is ~~known~~ in the trade, though, as a CCC, is there not? A. Yes; I have heard of it.

Q. And it is one in general use? A. I don't think it is in general use; I don't know.

Q. Well, it is used a good deal, is it not? A. Well, I have heard of it being used, but not often.

Q. Is it not also a fact that in the uses of these various grades of powder considerable experience is necessary to determine which is the best grade for a particular kind of coal, whether C, CC, CCC, or F, FF, or FFF? A. Yes; I should say so. 5936

Q. So that in any case, whether the powder is du Pont, Rand, Buckeye or other grade, there must be some experimenting in the particular kind of coal where it is to be used to determine what is the best grain to use? Is not that right? A. I think so, yes.

Q. After this Rand mine at Fairchance, Pennsylvania, how far did the business of that mine extend, how far west did that extend? A. That mine, I don't know of any mine there.

Q. Did I say mine? I meant mill, your mill. A. We sold as far west as middle Ohio. We did not go further west than that, except Pennsylvania, in an instance or two, that I recollect. I don't think we did. 5937

Q. How far east did the business of the Rand Company of Tennessee extend? A. Into Western Virginia and slightly into West Virginia.

Q. In other words, the Rand of Tennessee and the Rand of Pennsylvania reached entirely different fields, did they not? A. Yes, sir.

Q. They did not compete with each other at all? (No answer.)

Q. So that when the Rand of Tennessee was built—I will put it this way, first: When the Rand

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Samuel Rand—Redirect
Franklin W. Olin—Direct

of Pennsylvania was in operation it was only in competition with other mills as furnishing powder within that particular district, and did not cover the region which was afterwards incorporated or reached by the Rand of Tennessee? A. Yes, sir.

Redirect examination by Mr. Button:

5939 Q. Did not both your companies ship into West Virginia? A. I suspect they did lap a little, possibly, in West Virginia; but not to amount to anything.

FRANKLIN W. OLIN, called as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. Button:

5940 Q. When did you first go into the powder business, Mr. Olin, 1891? A. No, before that I was in the business of constructing powder plants and building powder making machinery as early as 1887.

Q. And were continuously so engaged until you went into the Equitable Powder Company in 1891? A. Yes, sir.

Q. And then you took up the manufacture of powder yourself? A. Yes, sir.

Q. Now, in that connection have you paid personal attention to the actual operation in the manufacture of powder ever since? A. Yes, sir.

Q. Have you discharge the same duties in reference to the Egyptian Powder Company recently, watching its operations? A. Yes, sir, I am directing its operations.

Q. And the operations of the Western Powder

Company attending to them in the same regard?

A. Yes, sir.

Q. And you are so occupied at the present time, I take it? A. Yes, sir.

Q. Now what—have you ever had occasion to build any mills, Mr. Olin, powder mills? A. Yes, sir.

Q. What powder mills have you built or been concerned in building? A. I have built a complete plant at Pompton, New Jersey, and another complete plant at Farmingdale, New Jersey, a complete line, one at Penobscot or Gracedale, this is on top of a mountain which is east of Wilkes Barre, a complete line of mills there. A complete line of mills at Huntington, West Virginia. Another complete line at East Alton, Illinois. Fort Smith, Arkansas, a complete line. A part of a plant at Chattanooga, Tennessee, for the Chattanooga Powder Company and several—parts of several plants through Pennsylvania where it was revamping or reconstructing some of the older style of mills and have supplied a complete outfit to the Giant Powder Company in California; and this year nearly a complete outfit for the British Columbia mills, a complete outfit for them, at the present time I am engaged on some powder machinery for the United States Government at Picatinny Arsenal, Dover.

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Q. Are you an engineer or professional man? A. Yes, sir.

Q. Are you an engineer by profession also? A. Yes.

Q. When did you take possession of the plant of the Buckeye Powder Company?

Q. Did you take possession? A. Yes, sir,—I think September 19, 1907.

Q. And did you organize the Western Powder

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Franklin W. Olin—Direct

Company for the purpose of taking over that plant?

A. Yes, sir.

Q. Did you immediately go to operating that plant? A. Not immediately after taking it over.

Q. How long after you took it over before you actually operated it? A. I don't think I could state just when we began to turn out the powder, but soon after we acquired the plant we began to prepare it for operation.

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Q. What was its condition, with reference to the necessity for repairs, Mr. Olin? A. Well, it was not as I would consider in good repair for manufacturing powder.

Q. Did you immediately go to spending money upon the repair of the plant? A. Yes, sir.

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Q. Can you state how much money was spent in repairing that plant from the time you took possession of it down to date, approximately? A. I don't think I can tell you in detail; the cost of the repairs, it was in so many localities, and partial repairs in some localities and complete construction in others that I would not be able to give you figures separating the details and all that work that was carried on.

Q. Could you give us the approximate total? A. There has been invested in the plant since we took possession of it in the latter part of 1907 over \$100,000.

Q. 1908— A. 1907 we took possession of it, in September, 1907.

Q. I think you are mistaken about that. A. Just one moment—you are quite right, 1908.

Q. You had previously testified 1907? A. Did I previously state 1907?

The Court: Yes, he did.

Q. Well, the correct date is 1908; it should be 1908? A. Yes, sir.

Q. Now, what is the pack house in a powder plant, Mr. Olin, just in a general way? A. That is the mill where the powder goes after it has been finished in the process of manufacturing, to be separated into different sizes and put into the kegs and prepared for the magazine or for shipment.

Q. That is the place where the different sized grains are separated and those of the same size put together; is that the idea? A. Yes.

Q. Now, is it an important matter in the powder business to have the separating process carried on skillfully and correctly? A. Why, it is in a commercial way. The miners object to mixed grains of powder and it interferes— 5948

Q. Well you, as well as having been engaged in the operation of powder plants, have become familiar during your experience with the sale of powder and the requirements of the consumers, have you not, Mr. Olin?

Q. Have you or have you not? A. I have had charge of the sales of the respective companies I have managed.

Q. What effect, if any, does the separation of the grains of powder as to their size have upon the use of powder in coal mining operations? A. It causes complaint to come from the miners. 5949

Q. That is the universal condition, or otherwise in that coal field? A. More seriously in some localities than others, but generally speaking it will cause complaint from the miners.

Q. Well, now, will you state in a general way what was the condition of the pack house of the Buckeye Powder Company when you took possession? A. The machinery was not competent as I found it to serve the intended purpose.

Q. What did you do to remedy that? A. Built an entire new packing outfit, sorting outfit, and installed it.

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Franklin W. Olin—Direct

Q. About when did you do that? A. The latter part of 1908; I think it was the first step after procuring title to the property, was to ship that machinery there; it was all in stock as a duplicate that I carry for various plants, and shipped that outfit there.

Q. And got it installed inside of a few weeks or how long? A. It only takes a short time; that was all in existence.

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Q. Was it installed prior to the time you furnished the DuPont Company any powder? A. Yes, sir.

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Q. Now what other changes did you make or repairs did you make to the plant, Mr. Olin? A. Well, the changes began after you would leave the power house, which included the boilers, the engine, generators, tore down the soda mill, soda stock house, charcoal mill, charcoal stock house, and erected new buildings in place of those; also built up a keg factory, beginning in the line of mills and following through in the same direction in which the crude materials were moved. There is only one of the four wheel mills there now that were there originally,—that has not been operated lately. Three other wheel mills were replaced with entirely new parts except the large wheels themselves which are wheels weighing about eight tons.

Q. About when was that, Mr. Olin? A. We began those repairs immediately after we got the plant shaped up and started operations and from time to time disqualified one wheel mill and rebuilt it and continued that process of partial operating and partially repairing until we had replaced all of that class of mills. We built a new press mill in an entirely different location; put in a new press itself; new outfit entirely. The original corning mill was used for a time and met with an accident. It was replaced after the accident,

it was rebuilt and the construction somewhat changed. The next mill would be where the drying and glazing was done and those mills are somewhat in the original condition, but have been rebuilt and reinforced and to some extent remodeled and those are the only mills in the line that were there when we took over the plant.

Q. That is the glazing? A. The glazing.

Q. Everything else you mean has been changed?

A. Yes.

Q. Replaced? A. Yes.

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Q. Now, has this been a continuous process since the 8th of September, down to date? A. Well, there hasn't been any constructing going on there for a little bit—oh, for some considerable time.

Q. Well, when did you get these repairs completed, then? A. Oh, there has been no construction work there in two years, about two years.

Q. What was the condition of the bed plates,—I believe they are called,—of the wheel mills? A. There was one of the bed plates that was cracked.

Q. Did you replace that? A. Yes.

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Q. What can you say in reference to the arrangement of the different sections of this mill or the different departments at the time you took it over as to economical production of powder, Mr. Olin? A. Well, it was not as economically arranged as it is at the present time.

Q. What was the trouble with anything in that regard? A. A great many places where there were little things that caused some extra labor in handling, as, for instance, in unloading the crude material, the nitrate of soda, which is 75 per cent. in weight of the composition, it was hauled up an incline over a railroad to a warehouse on top of the hill, and then—that was on a small tram car. At the present time the warehouse is so arranged

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Franklin W. Olin—Direct

that it is dumped out of the steam car into an elevator that carries it to the top of the warehouse right close to the railroad track. No cable hoisting or carts used in connection with it and saves money in unloading the crude material. The same is perhaps more strikingly illustrated in the saving which was affected in the handling of charcoal. The warehouse for the charcoal was some distance from the mill, and the material was carted from the warehouse to the charcoal mill in small trucks.

5957 At the present time the charcoal warehouse is on the railroad and the charcoal is dumped from the railroad cars into the warehouse, and the charcoal mills adjoining that warehouse with an elevator to take the material from the warehouse to the upper story of the charcoal mill. It saves considerable time and expense in handling that. The same might be said of the sulphur also.

5958 Q. Well, then, will you state from your experience in building of powder mills and operating of powder mills what is your opinion as to the economic arrangement of that mill at the time you took it over? A. Why, I would not say that the engineering in locating the plant and laying it out was of the very best.

Q. Now, in reference to the operation of the mill, what was its condition when you took it over as to whether it could be continuously operated or not? A. It could not be.

Q. For what reason? A. Parts of the driving machinery would fail and shut downs would come during the operating hours and the pay roll would continue and it was thought advisable to reconstruct those parts where the trouble occurred, and put in heavier foundations and stronger machinery; and to build the outfit so it could run continuously.

Q. So, as a matter of fact, were you subjected

to shut downs in the early operations of the mill from those causes? A. Yes, sir.

Q. In referring to foundations, did you—how extensive was the trouble that you have mentioned in reference to the lightness of the foundations? A. All the foundations in the entire plant were too weak for the strain they had to carry.

Q. What sort of foundations should a powder mill have as to strength and firmness? A. Well, taking it where these large wheels, two wheels weighing eight and ten tons, each operating on powder, it has got to have a rigid, solid foundation under it,—it should have. And the foundations there were in some cases walls under each side of the wheel bed with I-beams ten inches in height carrying the bed plate; whereas we put in a solid foundation under the mill, 20 feet square and put in I-beams 15 inches deep instead of ten. In addition filled in concrete solidly between the flanges of the I-beams so as to make the whole foundation of the mill 20 feet square, one mass monolithic, so it was connected and tied together and more stable than we found it originally. 5960 5961

Q. What do you say as to whether or not powder mill machinery deteriorates from year to year, Mr. Olin? A. Oh, it deteriorates.

Q. And I will ask you the same question in reference to the buildings and plant in general of a powder factory, is there a deterioration? A. Necessarily.

Q. Is that deterioration increased or otherwise by shutting down and idle machinery? A. Deterioration continues faster in a shut down.

Q. Why? A. Because of the nature of the materials out of which powder is made, the nitrate of sodium carrying considerable salt, will attack cast iron or steel or any metal parts, and if these parts

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Franklin W. Olin—Direct

are not being used so as to keep the moisture away from them, why, the rust affecting it, the erosion is much more rapid in a shut down condition than if operating.

Q. What was the nature of these buildings, were they wooden buildings or otherwise? A. Mostly wooden buildings, yes, sir.

Q. Were they subject to deterioration? A. Yes, naturally.

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Q. From your experience in powder mill business, can you state what would be the minimum depreciation of a powder plant per year in your judgment? A. That is a pretty hard question. It might vary considerably in different localities, it would not be uniform.

Q. Give the limits which under ordinary circumstances you think would be fair. A. I have had the experience, with the observation of deterioration, and that is in a powder factory along the sea coast, it will have a different effect than those on the top of mountains in Pennsylvania.

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Q. Well, confine your answer then to Peoria, Illinois and East Alton and thereabouts, they are about the same climate, aren't they? A. Yes, sir, I should say that it would cost from five to ten per cent. of the investment to keep the buildings in repair.

Q. In the running of your plant is it customary for you to charge up some amounts for such depreciation? A. Yes, sir.

Q. Now when you started these mills, the Western Powder Mills in 1908, you recall who your powder foreman was, Mr. Olin? A. I think Henry Franks was the name of the powder foreman.

Q. Do you know who had been the foreman there previously under Mr. Waddell? A. No, sir.

Q. You do not know? A. I do not know.

Q. Now, when you bought this plant, Mr. Olin, did you have any communication whatsoever in reference thereto, with the du Pont Company or any officer connected with the du Pont Company?

A. No, sir.

Q. Did they have any knowledge whatsoever of your intention of purchasing that plant? A. No, sir.

Q. At that time, had you been approached in any way as to furnishing du Pont Company with powder from that plant? A. No, sir.

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Q. Did you ever have any contract with them at that time in reference to the matter of any sort or description at the time you purchased it? A. No, sir.

Q. Is it true that immediately after the purchase you began to operate the plant at its full capacity?

A. No, sir.

Q. Was Mr. Waddell there at that time? A. Yes, sir.

Q. Did he have something to do with the first operation of the plant? A. Yes, sir, he had charge of our business there for the first year.

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Q. Was he in a position to know whether or not the plant was running at full capacity during that period? A. Yes, sir, he had full charge of the company's business there.

Q. Do you recall how many kegs of black blasting powder you made during that year 1909? A. I could not state the figures, I know it was,—I should say somewhere 100 to—

Q. Are not those figures on the same exhibit? A. It was less than 150,000 kegs.

Q. They are given on this same Exhibit 1232, are they not? Won't you state how much was made in the end of 1908 and then in 1909, black blasting powder? A. For the year 1908 the statement shows 26,022 kegs.

Q. What months were those, was that powder manufactured? A. November and December only were the two months that the plant was operated. In 1909, 98,236 kegs.

Q. Won't you give the next two years if they are there? A. 1910, 169,431 kegs. 1911, 146,734 kegs. 1912, 151,433 kegs.

Q. Running at full capacity any one of those years, Mr. Olin? A. We manufactured all the powder that we could, except, possibly in the summer season our magazine might be full.

Q. You testified this morning that in purchasing the Buckeye powder plant, you did not disclose your object to the du Pont Company. I will ask you if you took it up with any other powder companies besides the du Pont Company? A. No, sir.

Q. Was Mr. Lent associated with you in the purchase of the Buckeye Company? A. Yes, sir.

Q. Outside of you and himself and Mr. Waddell and his stockholders, did anyone know anything about it? A. Not that I know of.

Q. After you got possession of the property, was it profitable? A. Well, not for some time.

Q. Have you any objection to stating how much money you have made at that plant during the four years you have operated it, Mr. Olin—approximately? A. For the entire time?

Q. Yes. A. Why, I don't like to publish our business any further than I have to. I don't know that—but that I would be agreeable to stating what the profit has been over the entire period, but it is difficult to—

Q. We would be glad to know if you think it will not damage you too much, Mr. Olin, say for those four years, for the first four years? A. I don't know just how much, how valuable this information will be to you because there has been some rifle powder manufactured during that time

on which there is a much greater profit than on blasting powder.

Q. Can you state first, about how many kegs of rifle powder you have made each year? A. In 1909 we made 21,623 kegs of rifle powder. In 1910—

Q. Right then, Mr. Olin, will you state about how many days' operation it would take of the plant to manufacture that 21,000 kegs? A. That would require approximately 50 days.

Q. Now, if you will get the number of kegs in the other three years. A. 1910, 9,231 kegs.

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Q. How many days would that be, about? A. That would be approximately 23 days. In 1911, 7,810 kegs.

Q. That would be about 20 days or 19? A. Approximately 20 days. 1912, 18,166 kegs.

Q. That would be about— A. 45.

Q. 45 or 46 days? A. 45 days, those were all kegs of 25 pounds each.

Q. Now, if you were willing to state the net profit of the business during those four years, Mr. Olin, we would be very glad to have you do so. A. Approximately \$48,000.

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Q. And the original investment was \$75,000 for the plant, was it? A. Yes, sir.

Q. And \$100,000, since that time or how much since that time for the plant? A. There is a total investment there at the present time of \$201,000.

Q. For how long has that amount been invested there? A. Why, it has been put in gradually from the time we got it until the time we finished the construction work.

Q. Now, in addition to that amount of investment, was other capital employed in the production of this profit? A. No, sir, I don't think so.

Q. That would be—then the profit would be on the— A. On the product of the mill.

Q. Was that much of investment, was that much capital employed as early as 1909? A. No, sir.

Q. How soon after 1909 would you say you got it all? A. It would be pretty hard for me to tell you the amount of investment there at any particular period. It began in 1909 and for a small portion of the year 1909, all of 1910 and 1911 and a portion of 1912, the total amount was the difference between what we originally invested and what we have now invested, was put in, and I can not give you dates as to what the investment was. I have not those figures with me.

Q. Could you apportion the profit as between the rifle and blasting powder in any way? A. No, sir, except that I can approximate it in a few minutes.

Q. I wish you would do that, Mr. Olin? A. Somewheres between one-half and three-quarters of that profit has been made on rifle powder.

Q. Now, Mr. Olin, when you purchased this property, did you take a deed of the real estate? A. Yes, sir.

Q. Now, Mr. Waddell; as I understand it, went to work for the company; did you pay him a salary, Mr. Olin? A. Yes, sir.

Q. How much was that? A. \$12,000.

Q. Was that a monthly salary? A. No, for the year, for a year.

Q. When was that arrangement made with reference to the sale of the property to you? A. At the same time that negotiations were carried through, for the purchase of the property.

Q. Was it a part of the same transaction? A. Yes, sir.

Q. Did you make that arrangement personally with Mr. Waddell, or were you present when it was made? A. Yes, sir, and Mr. Lent I think was also present.

Q. You say he did not get paid monthly then?
A. No, we gave him our notes for the year's salary payable in one year and two years.

Q. Do you recall how much was payable at the end of one year? A. I think our arrangements called for \$5,000 payable the first year, and \$7,000 in two years.

Q. And that was represented by two notes which you gave Mr. Waddell? A. Yes, sir.

Q. And how was the—and were those notes subsequently paid? A. Yes, sir. 5978

Q. How was the purchase price of the mill property represented,—also by notes? A. No, we paid some cash and the balance by notes.

Q. Have you any of the notes here that were involved in these transactions? A. I have some of them, not all of them.

Q. May I see them? A. Some I am not able to find (Handing paper to counsel).

Q. I see this is a \$5,000 note dated September 19, 1908, was that one of the salary notes that you mentioned? A. Yes, sir. 5979

Mr. Button: I would like to have that marked for identification.

(Same marked Plaintiff's Exhibit 1243 for identification.)

Q. Have you others? A. I have in my bag, the property notes.

(Bag handed to witness.)

A. There is one of the purchase notes. (Handing paper to counsel.)

Q. This is dated September 19, 1908, for \$25,000, payable on or before two years, signed by yourself. A. Yes, sir.

5980

Franklin W. Olin—Direct

Q. That is one of the purchase—one of the notes for a part of the purchase of the mill property?
A. Yes, sir.

Mr. Button: I ask to have that marked for identification.

(Same marked Plaintiff's Exhibit 1244 for identification.)

5981

A. (Continuing.) I am of the opinion that the other note was signed by Mr. Lent.

Q. And you haven't got that? A. I have not got that.

Q. What experience had Mr. Franks had in the manufacture of powder when he took charge of the Western Powder Manufacturing Company? A. Well, he is an experienced powder man, he took charge of the first mill that I constructed in 1888.

Q. And had he been in the business continuously?
A. Yes, sir.

5982

Q. What in your opinion would you say as to his competency, Mr. Olin? A. Very, very—

Q. Was he in your mill continuously since 1888?
A. Not continuously, he was with me when I managed the Phoenix Company and after I retired from that company, there was a time when he was not connected with any of my companies; then later he came back into them.

Q. Was he superintendent of any of the du Pont mills at any time? A. Yes, sir.

Q. What mills, do you know? A. I think at Birmingham, Alabama, for a time and at Paterson, Oklahoma.

Q. During the period from 1888 until 1908, twenty years, can you state about how many of those twenty years he had been working for you?
A. I can not recollect the dates accurately, I should say at least one-half of that time.

Q. Was he superintendent of the mill at Bellville at one time? A. Yes, sir.

Q. Who was Mr. Jack Pierce? A. Mr. Pierce was a man that had been with some of my companies nearly eighteen—seventeen or eighteen years.

Q. In what line of business was his experience? A. General superintendent.

Q. Of the operations? A. Yes, sir.

Q. In the month of February? A. Formerly as a mill foreman and was graduated to general superintendent.

5984

Q. In your opinion was he a competent man in those regards? A. Yes, sir.

Q. Well, did you—was he familiar with the matter of repairing and making changes and alterations? A. Yes, sir.

Q. In this particular plant? A. Yes, sir. He had charge of construction work of some of our plants and—

Q. When did you first send him up there, Mr. Olin, to the Buckeye plant? A. I think soon after we purchased the plant.

5985

Q. And for what purpose did you send him there? A. To make an inspection and report on the condition in detail of the different mills.

Q. And did he do so? A. Yes, sir.

Q. And then did he take charge of the repairs? A. Yes, sir, he took part in the starting of the mills and the repairs of it.

Q. Do you recollect how long he stayed there on the job? A. I can't tell that, he was there at times, and would go back to East Alton and then return to Edwards at various times.

Q. Since the organization of the E. I. du Pont de Nemours Powder Company in 1903, has your company, the Equitable, been competing with it, Mr. Olin? A. Yes, sir.

Q. Have the sales force of the Equitable Powder

5986

Franklin W. Olin—Direct

Company solicited business that you have known was being supplied by the du Pont Company during those years? A. Yes, sir.

Q. Has the Equitable gained some of that business during those years? A. Yes, sir.

Q. Has the Equitable lost some of its own business to the du Pont Company during those years to your knowledge? A. Yes, sir.

5987

Q. Has there been any arrangement whatsoever between the two companies in reference thereto? A. No, sir.

Q. In reference to leaving each other's trade alone? A. None whatever.

Q. Has there been any arrangement in reference to contracts and respecting trade between the two companies? A. None whatever, sir.

Q. Likewise has your company been competing with the American and Miami Companies? A. Yes, sir.

Q. And both have been selling powder in the district which you reach? A. Yes, sir.

5988

Q. During all of that period? A. Yes, sir.

Q. King powder, also? A. Yes, sir.

Q. Any arrangement with any of those companies? A. None whatever.

Q. Either to respect their trade or otherwise? A. No, sir.

Q. And they are competing against you? A. Yes, sir.

Q. Is the same true with the Austin Powder Company? A. Not to the same degree on account of their being further East.

Q. Well, so far as they reach the same territory is it true? A. Yes, sir, their St. Louis office is competitive with ours.

Q. Now, during—after Mr. Waddell came into the field in 1903, were there various other companies organized that supplied powder to that terri-

tory? A. Well, there were companies that came into the business about that time, I can not tell the year exactly.

Q. Do you remember the Burton Powder Company? A. Yes, sir.

Q. Do you know of the existence of the Burton Powder Company and its plant, Mr. Olin? A. Yes, sir.

Q. Do you know about when they were organized? A. I do not.

Q. Where is their plant located? A. Near Youngstown, in the eastern part of Ohio.

Q. Were they to your knowledge selling powder at the same time the Buckeye Powder Company was? A. Yes, sir.

Q. And in the same territory? A. Yes, sir.

Q. The Egyptian Powder Company was organized about when, Mr. Olin? A. About 1902, to the best of my recollection.

Q. Had it been selling powder before the Equitable acquired the interest in its stock? A. Yes, sir.

Q. And in the same territory with the Buckeye? A. Yes, sir.

Q. And do you know whether it had been competing with the Buckeye in that territory? A. Necessarily so, they are not far apart.

Q. How about the Excelsior Powder Company, do you know about that? A. That has a plant located near Kansas City and competes with the Illinois companies in the territory west of the Mississippi River.

Q. In part of the territory which was reached by the Buckeye mills? A. Yes, sir.

Q. Do you know of your own knowledge whether that was competing with the Buckeye during this period? A. Yes, sir.

5990

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5992

Franklin W. Olin—Direct

Q. Now, do you know about the Jefferson Powder Company? A. I know of the existence of such a company.

Q. Is that too far away to compete in that district? A. They did not compete as far north as Illinois.

Q. The King Powder Company I understand sends powder into that territory, doesn't it? A. Yes, sir.

5993

Q. Does the Miami compete in that territory? A. Yes, sir.

Q. And did it during 1903 to 1908? A. Yes.

Q. Where are the mills of the Miami Company? A. At Goes, Ohio, that is near Zenia.

Q. And near the Phoenix Company? A. And one is south of St. Louis at Thebes on the Mississippi River.

Q. Are both those mills supplying powder in this district during this period? A. Yes, sir.

Q. In which the Buckeye Company was operating? A. Yes, sir.

5994

Q. How about this powder company in Tennessee? A. The Rand?

Q. The Rand, was that furnishing powder in this district? A. I should say there would have been a territory in Northern Kentucky and Southern Ohio that might have been competitive, but the Rand Powder Company did, or has been doing very little business in Illinois.

Q. In that part of the territory that was competing, was it? A. Yes, sir.

Q. And the Senior Powder Company has its plant where? A. At Morrow, Ohio.

Q. Was this company selling powder throughout this district and competing directly during the entire period from 1903 to 1908? A. Yes, sir.

Q. And is the Tennessee Powder Company too far away to reach this district? A. I would not

say that they were competitive to any appreciable degree.

Q. Where is the plant of the United States Powder Company? A. Coalmont, Indiana and twenty-six miles south of Terre Haute.

Q. And they reach this territory? A. Yes, sir.

Q. And was it competing during these years? A. Yes, sir.

Q. Now, when the Buckeye Company came into the field, do you know personally of the prices it made as compared with the ruling prices at that time? A. Only as I would— 5996

Mr. Abbot: Now do you know this of your own knowledge, Mr. Olin?

The Witness: Yes, sir, what I have to say is my personal knowledge.

Mr. Abbott: Yes, all right.

Q. Well, so far as you know of your own personal knowledge, will you state what they did in reference to prices, Mr. Olin? A. I only know as I would get the information from prospective and our customers. 5997

Q. Have you any other sources of knowledge except what your customers told you? A. I have seen quotations from the Buckeye Powder Company in the hands of our customers.

Q. Letters you mean? A. Letters, yes.

Q. Signed by the company? A. Yes, sir.

Q. Well—can you remember any particular instances in the hands of what customers you ever have seen those letters? A. It would be pretty hard to state specifically the details of that matter. It was a long time ago.

Q. Now, in regard to the consumption of powder, Mr. Olin, in that territory during the years 1903 to 1907, did the introduction of these mine cutting

5998

Franklin W. Olin—Direct

machines, coal cutting machines have any influence on the consumption of powder, and if so, what? A. Yes, sir.

Q. Won't you state what the situation was during those years in that regard? A. For several years we have met the reduction of demand caused by the introduction of mining machines that reduced the quantity of powder that the mine uses very materially.

5999

Q. How much does the introduction of mining machines into the mine reduce the consumption of powder, can you give the percentage? A. In investigating the drift of the business as it has been running the last few years, we have made it our business to investigate certain specific mines before they put in mining machines and after they were introduced; and it will vary considerably according to the mine, the mines that we have investigated have shown a reduction—

Q. Have you studied this subject yourself, personally, Mr. Olin? A. Yes, sir.

6000

Q. Have you observed these machines working? A. Yes, sir.

Q. And have you been selling powder to various companies who have introduced those machines? A. Yes, sir.

Q. So that you know how much they used before and after the introduction of machines? A. Yes, sir.

Q. Well, now, will you state what in a general way the effect is on the consumption of powder in percentages?

Q. In how many instances, have you so investigated? A. I could not tell that. Wherever we have learned of one of our customers putting in mining machines, we have followed his business to see if it corresponded with the general average that

we had checked up. It is a vital part of our affairs now to determine how extensively mining machines are going to reduce the consumption of powder.

Q. Who has actually done the investigating? A. Our sales manager has written the letters at my suggestion in some cases and in some cases myself.

Q. And you have received answers to those letters? A. Yes, sir.

Q. So that information together with the information you personally had of the increase or decrease in the particular mines that you have supplied, is the basis of what you know on this subject? A. Yes, sir.

6002

Q. Can you state of your own knowledge circumstances of that sort as to any particular mine?

A. The information that I have is given to me as a statement in a letter from the coal operator of the number of kegs of powder used. I have not checked the number of kegs of powder that went down into the mine, nor have I checked the number of tons of coal that were lifted out of the mine. I have taken the operator's statement for those figures.

6003

Q. In what mine have you known of your personal knowledge that these machines have been introduced? A. Madison Coal Company.

Q. Were you supplying that mine before the introduction? A. We supplied the mine ever since we have been in business?

Q. And have been since? A. Yes, sir.

Q. Can you state how much powder—do they buy all their powder through you? A. Yes, sir.

Q. Can you state how much you furnished them before and how much after the introduction of these machines? A. I cannot give you the kegs. I remember the reduction in the demands or consumption of powder in particular mines, and it varied from—

6004

*Franklin W. Olin—Direct**By Mr. Abbott:*

Q. Now wait. Are you speaking only of the Madison Coal Company's mines? A. Specifically now of the Madison Coal Company.

Q. And this is information which you get from your own knowledge of how much powder you furnished them before and after the introduction of the machines, is that all? A. It is information that I took from letters inquiring about the output of their mines as to tonnage of coals.

6005

Q. And their replies to you? A. Yes.

By Mr. Button:

Q. That was not in my question, Mr. Olin, my question was how much powder you furnished them before and how much after the introduction of the machines? A. I cannot give you the figures of powder shipped to particular mines from memory.

Q. Well, can you state whether or not you furnished them more or less after— A. Less.

6006

Q. Can you state approximately how much less?

By Mr. Abbott:

Q. Now, wait. Can you state this of your own personal knowledge? A. The results are determined by my own investigation, taking the figures from the operator's records of the powder consumed and the coal produced.

Q. But not of anything that you have personally investigated in the mines yourself? A. No, sir, not in the checking of the quantity of powder used or the quantity of coal produced; that is not my checking.

By Mr. Button:

Q. Do you know of your own personal knowledge,

in a general way, how much powder you sold them and furnished before and after; that is what I was inquiring about.

Q. Did you ever enter into any scheme with any other powder company of any sort to put the Buck-eye Powder Company out of business? A. No, sir.

Q. Did the Equitable Company or any other company that you are connected with— A. No, sir.

Q. Do you know of any such effort having been made at any time? A. No, sir.

6008

Cross-examination by Mr. Abbott:

Q. You have stated that you built a number of mills at various times and were well acquainted with the powder mill business from the construction end. I am going to ask you to state how much of a plant the plant was at Pompton, N. J. How much of a plant was that? A. About 600 kegs a day.

Q. Is that plant still in existence? A. No, sir.

6009

Q. Has it been destroyed? A. It has been dismantled, I think.

Q. Do you know when it was dismantled? A. No, sir.

Q. Do you know why it was dismantled?

Q. The plant at Farmingdale, New Jersey, how much of a plant was that? A. That might be said to be competent for 800 kegs, it is not what we call——

Q. The plant at Penobscot, how much of a plant is that? A. That was about three-quarters as large as the Farmingdale plant.

Q. And the plant in Huntington, West Virginia? A. That was about the same size as the Farmingdale plant.

6010

Franklin W. Olin—Cross

Q. This plant at East Alton, I take it was your own plant, the Equitable? A. Yes, sir.

Q. This plant at Fort Smith, that was your own plant also? A. Yes, sir.

Q. The plant at Chattanooga, Tennessee, how much of a plant was that? A. That was a larger plant than the one at Farmingdale.

Q. You said that you built several similar plants in Pennsylvania, how large were they? A. They were small plants.

6011

Q. This plant in California, what plant was that? A. That was for the Giant Powder Company, about the capacity of the Farmingdale plant.

Q. And the one in British Columbia, about how large was that plant? A. That was about half the size of the Farmingdale plant.

Q. And the one you are now employed by the United States Government to build? A. Not building plant, powder machinery.

Q. For whom did you construct these various plants, Mr. Olin, for yourself, or for some one else?

6012

A. I have a personal interest only in one plant, the Western Powder Manufacturing Company; the rest were for corporation.

Q. I am speaking of now by whom you were employed to construct these various plants. A. I was in business for myself in the building of those plants, my own business.

Q. Oh, yes; but did you build and sell those plants to somebody, or did you build them under a contract for somebody? A. My contract with the corporation that was developing or existing for operating those plants, covering in some cases the finding of a suitable location; the purchase of the location for their account, and the contract for building the complete equipment, and operating it for thirty days.

Q. What company was it that you were building these plants for; that is to say, who was proposing to build and operate those plants? A. The various corporations.

Q. Well, I am trying to get to that; name them, please. A. Farmingdale, New Jersey, Huntington, West Virginia, and the work that I did for the same company at Belleville, Illinois—were all built by the Phoenix Powder Manufacturing Company.

Q. Yes. A. The plant at Penobscot, Pennsylvania, was called the Enterprise Powder Manufacturing Company, a corporation, separate and distinct from the Phoenix. The plant near Chattanooga, Tennessee, was the Chatonoooga Powder Company, the plant on the Pacific Coast, the Giant Powder Company, as was also the machinery that went to British Columbia. The Rand Powder Company of Tennessee was supplied with part of a plant; I cannot tell the name of the corporation, but A. B. McAbee of Pittsburgh was the principal manager, and it was called the Globe Powder Company, by the way; the Globe Powder Company near Pittsburgh, Pennsylvania. Then we had some machinery from the Shamokin Company, Shamokin, Pennsylvania, a partial plant, and contract for construction. The Miami Powder Company purchased parts of a plant. The United States Powder Company, the King Powder Company, the Senior Powder Company, Austin Powder Company—they all purchased more or less machinery at various times, and in some cases my men have erected it.

6014

6015

Q. Do you know anything about other plants than those that you have built, as to how they were constructed; do you know anything about any of the plants owned by the Du Pont de Nemours Company? A. I have seen some of their plants.

Q. Do you anything about their plant at Brandywine? A. No, sir, not in detail.

Q. Have you ever been there? A. No, sir; I have been at the testing station in connection with the ammunition business, but not in connection with powder business.

Q. You have never seen their plant at all? A. No, sir.

Q. You do not know how it is constructed? A. No, sir.

Q. You do not know the kind of machinery that is used there? A. No, sir.

6017 Q. Did you ever visit the mills of the Hazard Powder Company at Hazardville? A. No, sir.

Q. Or the mills of the Schaghticoke? A. The Schaghticoke, yes, sir.

Q. Do you know where that is? A. Yes, sir.

Q. Do you know how those mills are constructed? A. Somewhat, yes, sir.

Q. Will you state whether or not the buildings and arrangements of that plant are constructed according to your idea of how a plant should be constructed? A. In some respects, I would consider the construction quite modern.

6018 Q. In what respects would you consider it not modern? A. Some of their power system, and power transmission, was not of the very best.

Q. As to their machinery, how about that? A. Some of their machinery was good.

Q. Some of it, the rest of it? A. And some of it I would not consider as good.

Q. I will ask you that question as to whether or not it is not a fact that powder plants and powder machinery—the manner in which plants are constructed, and the way in which machinery is constructed—have changed in the same general way in which all other classes of industrial plants have changed from time to time? That is to say, have not they progressed in improvements? A. I should say there have been improvements.

Q. Yes, and is it not true with you yourself in your own mills, the Egyptian Mills, the Equitable Mills—that you have made very extensive improvements and changes in your machinery from time to time? A. In the Egyptian Mills I did, because the machinery that I found there after purchasing it, was identical with that in the Buckeye Mills.

Q. How about the machinery in your own plant in the Egyptian plant, the Equitable plant? A. That was constructed from my own plans and patterns.

6020

Q. You have never changed that since it was built, since 1892? A. In some respects.

Q. You have taken out some machinery and put in some new, have you not? A. We have added some new and more improved, but have not replaced very much of the original construction with improved methods.

Q. Did you have anything to do—I believe you stated that you did have something to do with the original construction of the Egyptian plant? A. No, sir, nothing.

6021

Q. You did not have anything to do with that; was that mill constructed by people who were supposed to have some knowledge of how to construct powder plants? A. I should judge not, by the appearance of the plant.

Q. You yourself did not see anything in the machinery at the time you took it over, that was specially to be condemned, did you? A. Yes, sir.

Q. And you took it out and made changes in accordance with your original plans? A. Yes, sir.

Q. Have you ever gone into any mills, any other mills of the Du Pont Powder Company beside the Schaghticoke? A. I think not.

Q. That is the only mill of the Du Pont Powder Company that you have ever seen? A. Yes, sir.

Q. Have you ever seen the Austin Mill plant?

A. Yes, sir.

Q. Is that an up-to-date plant in all respects?

A. Quite good, now.

Q. How long has it been such as to meet your approval? A. Some six or seven years. I was called there in consultation on the plans, that they were considering them, and helped work out revised plans, for nearly the entire plant; supplied certain parts of the machinery, but did not superintend or look after the construction work, but helped to decide on the plans quite largely, that should be followed.

Q. Now, were those plans followed? A. Not in every respect.

Q. Were they in the main? A. I beg your pardon.

Q. Were they in the main? A. Only in reference to power transmission. The plant was in fairly good repair, and it meant the disqualifying of quite a portion, but at that time it was not thought advisable to go into it; that work is now going on, however, under my engineers' directions.

Q. That plant is largely owned and controlled by Mr. Lent, is it not? A. I do not know, sir.

Q. Mr. Lent is the President of the Company?

A. Mr. Lent is the President of the Company.

Q. And he is an associate of yours in the Western Powder Manufacturing plant? A. Yes, sir.

Q. Now, the Austin Powder Company has been doing business for a great many years, has it not?

A. A very old company, I understand.

Q. And a very successful company? A. I do not know as to their success, sir.

Q. Well, don't you know that the Austin Powder plant has been doing a generally recognized successful business in this country? A. Yes, sir.

Q. That it has been making good powder? A. Yes, sir.

Q. And been selling very large quantities of that powder ever since it was built? A. I do not know as to their sales, how much they sold.

Q. It has been (in other words) supposed to be a successful powder plant? A. I should say so.

Q. Now, how about the American Powder Mill plant, do you know anything about that? A. Well, I do not know that they have any blasting powder plant.

Q. I mean the mills that are owned by the American Powder Mills—or Miami? A. The American have a rifle plant near Acton, Massachusetts. 6026

Q. Do they not have, or control, the Miami Powder plant? A. I do not know, sir.

Q. I am assuming that if that is a mistake, if you know nothing about the Miami Company's plant. A. I know the Miami had a plant at Goes, Ohio, and another one at Thebes, Illinois.

Q. Have you investigated those plants? A. I have never been to them.

Q. Never been to them? A. No, sir.

Q. Will you just state what plants you have seen and inspected yourself outside of those plants you have constructed yourself, and the names of which you have given us. A. Several small plants through Pennsylvania. 6027

Q. Give us the names of those, please. A. What was formerly called the O'Connell Powder Company, near the vicinity of Shamokin, The Miller Powder Company. I spent some time at the Rand Powder Company, after it was formerly called, at Fairchance, Pennsylvania, That plant was later dismantled. The Senior Powder Company; the King Powder Company; the Ohio Powder Company.

Q. How many wheels were there in the Rand Company's plant that you visited? A. Not any.

Q. I beg your pardon? A. Not any.

Q. What did they use? A. They used the barrel process, as it is called.

Q. How many barrels did they have? A. I cannot tell you that now, there are quite a number of barrels, and I do not remember the capacity.

6029 Q. What is the relative merits of a barrel mill and a wheel mill, so far as the production is concerned? A. The wheel mill powder is superior to the barrel mill powder for general use, because the wheel mill powder is made of a short process and don't work out as dense a grain, won't stand storage, and has to be used much more promptly after it is manufactured.

Q. Then, as I understand you—in the first place, do you know how many powder mill plants there are in the United States? A. No, sir.

Q. Do you know how many approximately there are? A. Well, somewhere—if you are speaking of black powder mills?

6030 Q. Yes. A. I am not able to state the number, no, sir.

Q. Are there as many as 150? A. I think not.

Q. You think not. A. No, sir.

Q. As many as 100? A. No, sir.

Q. Well, then, tell me about how any you think there are. A. About forty.

Q. About forty; so that of all the mills in the United States manufacturing black blasting powder, you have only seen outside of the mills which you have constructed, those five or six, the names of which you have read, is that right? A. I have given you the mills that I have constructed, and the mills that I have visited.

Q. Yes. A. Those are all that I have seen.

Q. Now you say that you are a manufacturer of powder machinery or have been? A. Yes, sir.

Q. You would naturally, would you not, think that your powder machinery was the best? The best make, the best grade; the best for all purposes?
A. Perhaps so.

Q. And when you make changes in your plants, you install your kind of machinery, don't you? A. Yes, sir.

Q. The machinery which you make? A. Yes, sir.

Q. And that you think is the best for the purpose? A. Yes, sir.

Q. Now, is your machinery purchased by the Du Pont Powder Company for installation in its mills altogether? A. It has been used. 6032

Q. Altogether? A. No.

Q. They don't use any other kind but your machinery? A. No; I say in some cases I have sold them machinery.

Q. You stated that you bought the Egyptian Powder Mill? What did you pay for that plant?

Objected to and objection sustained.

Q. Now, referring to the matter of the Buckeye Powder Company's plant, what was the kind of engine that they had in that plant, at the time you bought it? A. A high pressure Corliss valve engine. 6033

Q. What was the size of the foundations upon which it was laid? A. Suitable as to size for the engine.

Q. It was a suitable foundation, was it? A. The foundation has proven to be somewhat weak.

Q. How long since it began to show some weakness? Well, soon after we began to operate the plant.

Q. When was it that you first noticed this weakness; I should like to get the date? A. I should say during the year, probably, of 1909.

6034

Franklin W. Olin—Cross

Q. Have you made any changes in that? A. Yes, we have made some changes.

Q. When did you make those changes? A. I cannot tell you that; I should say during 1909.

Q. Do you know anything about the cost of the Corliss engine? A. Well, to some extent.

Q. Do you know what that plant cost—that engine? A. No, sir.

Q. You do not? A. No.

6035

Q. Now, what was the change that you made at that time, or at any time, in the foundation on which the Corliss engine was operated? A. The anchor bolts were loose, and pulled up through the foundation.

Q. How much did it cost you to make that change? A. I cannot tell you that.

Q. How long did it take you to make it? A. Not very long.

Q. Was it over a day? A. I should say yes, something over a day, and we found the cylinder of the engine cracked, and we had to replace that also.

6036

Q. That would not be unusual would it, in the operation of a large engine, that the bolts would be loosened in the course of time? A. Well, if it was well put in, they would not come loose.

Q. Never? A. I never knew one to, if it was properly put in.

Q. What kind of a generator was there in the Buckeye Powder Company? A. A good generator.

Q. It was a good generator? A. Yes, sir.

Q. You never had to change that? A. Yes.

Q. Did you have to change it because it was not good? A. Well, it was incompetent to some extent for the load; the insulation had become charred by overheating.

Q. What was the make of the generator? A. General Electric.

Q. There are no better generators made than the General Electric are there? A. I think the generator was a satisfactory machine.

Q. Do you know what that cost? A. No, sir.

Q. Now, what kind of a boiler did they have?
A. A horizontal tubular boiler, two of them.

Q. Have you got those same boilers yet? A. Yes, those two are still in use.

Q. You have not changed them; have you got that same generator yet? A. Yes, the same generator is there, but it has been taken out and repaired, and rewound, both in the fields and rotaries.

6038

Q. When was that done, what year? A. This last year, this present year.

Q. Just this last year? A. Yes.

Q. So you operated with it from 1909 up to the present time, practically up to last year? A. Yes, sir.

Q. Without any change? A. Yes, sir.

Q. Do you know what those boilers cost? A. Not the two that were in there, no, sir.

Q. Now, take the height and size of the stack, how high was the stack? A. I think about 125 feet.

6039

Q. Did you measure it? A. No, sir.

Q. Don't you know as a matter of fact it was 140 feet? A. It may be.

Q. Have you ever changed that stack? A. No, sir, it is a good piece of work.

Q. Good work; now, how large is it in diameter?
A. I should say perhaps 42 inches.

Q. Don't you know as a matter of fact it is six feet? A. No, sir, I do not, from my own investigation, I do not know that it is six feet.

Q. It might be, might it not? A. Well, there would be no very good reason for putting in a stack six feet in diameter coming from two horizontal boilers their size.

Q. You are simply forming a conclusion on that, you do not know the size of it? A. No, I don't know the size of it.

Q. What was it composed of, what material? A. It is an iron stack, boiler iron.

Q. Is it not steel? A. It might be, yes. The difference between steel and wrought iron is a close figure.

Q. Now, do you know what that stack cost? A. No, sir.

6041

Q. Have you any idea? A. No, I could not tell.

Q. Now, take the soda beaters; how many soda beaters were there when you took over the plant? A. There were two originally.

Q. Do you know what those cost? A. Approximately?

Q. What? A. About \$400 each.

Q. Have you changed those soda beaters? A. Yes, sir.

Q. When did you change them? A. Soon after we took the plant over.

6042

Q. What do you mean by "soon after;" what date? A. Well, within a year.

Q. When you changed them did you put in some soda beaters of your own choice? A. Yes, sir.

Q. Some of your own manufacture? A. No, not altogether manufactured though according to my specifications.

Q. Do you know who manufactured the soda beaters that you found in there at the time? A. George T. McLaughlin & Company.

Q. Is he a reputable manufacturer of soda beaters? A. Yes, sir.

Q. And are not his soda beaters used pretty generally throughout the country? A. Yes, sir.

Q. Now, then, how many pulverizer cylinders did you find there in the plant? A. Charcoal?

Q. Yes. A. Pulverizing cylinders.

Q. Yes. A. I think there were 12.

Q. Have you made any changes in those? A. Yes, sir.

Q. When did you make your changes there? A. I won't be positive about the date, but as soon as we had an opportunity to get the other machinery together, and shut down the plant for the time that we had to, to make the change.

Q. That was immediately after you took possession? A. Not immediately, no, but some time, possibly in the next 18 months. 6044

Q. Now, what pulverizer cylinders did you have to take the place of those? A. Some that I had made to my own specification.

Q. Some of your own make; now take the length and size of that line shaft, how long was that, the line shaft? A. I guess they were about 200 feet.

Q. Now, was it not 260 feet? A. It might have been.

Q. And what is the size of the steel used? A. It varies in different points along the line. 6045

Q. It varies; well, what average then—what was the average size? A. Oh, I guess it runs from 5 15-16, or 6 inches down to four.

Q. Has that line-shaft been changed since? A. Yes, sir.

Q. Did you change that to some of your own grade and make? A. We left that portion of the shafting in there, that we could use up to the first building, outside the engine house. Then the changes were made from that point on.

Q. Yes. Now, do you know what that line shaft cost originally to install? A. No, sir.

Q. You don't know anything about the cost of it? Now, about the number of wheel mills, how many wheel mills were there in the plant when you took it? A. Four.

Q. Do you know anything about the cost of those mills? A. Not those particular mills, only approximately.

Q. Have you made any changes in those? A. Yes, sir.

Q. When did you make those changes? A. Soon after we took the plant over.

Q. I would like to have you be specific as to dates, what date was it? A. I should say perhaps the latter part of 1909.

6047 Q. Did you substitute for those wheel mills, some wheel mills of your own choice and make? A. Only so far as the driving machinery was concerned. The same wheels themselves which are large cast iron wheels connected together with a spindle, passes through their center, those were the only three pieces that were retained of the old wheel mills. The rest of it was all new construction.

Q. What was there besides that that was used in connection with the wheel mills, beside those three pieces? A. Well, there is the bearing in the center, the upright shaft, which we changed from cast iron
6048 to steel, to make it larger put two key ways in, to carry the main driving gear, instead of one, and tore out the foundation underneath the upright shaft that supports it, and put in our own design of step-plate, and step and boiler blocks and bearings, that carried the driving pinions that drove the end gear.

Q. Well, those particular changes that you made in the wheel mills were what proportion of the total cost of the wheel mills? A. About three-fifths.

Q. Do you know what the original wheel mills cost? A. In that plant? No, sir.

Q. Now, take the horizontal press; have you made any change in that? A. Yes, it is an entirely new press.

Q. That is a new press; what make was the horizontal press that you found there at the time?

A. I believe it was made by the Allentown Foundry and Machine Company.

Q. Is not that a reputable manufacture of powder machinery? A. I would not say that they are not.

Q. Well, is not the machinery that is manufactured by that company largely accepted and used throughout the United States? A. I do not know how extensively, sir.

6050

Q. When did you make this change in the hydraulic press? A. Soon after—No, it was later than, I think in the latter part of 1909. I think it was during the winter of 1909.

Q. Now, as a matter of fact, is it not true that the Allentown Foundry & Machine Company make a good deal of machinery for the Du Pont and Laflin & Rand Powder Companies? A. I do not know.

Q. As a matter of fact were not these very machines, this very horizontal press, made for the Laflin & Rand Company? A. I do not know, sir.

6051

Q. Now, the Corning Mill; do you know anything about the original capacity of that Corning Mill? A. In a general way.

Q. What was its capacity? A. I should think it would be competent for 1,000 kegs a day, if you ran it hours enough.

Q. For how many hours' run do you say? A. It ought to turn out 200 to 250 kegs an hour.

Q. That would be 1,000 kegs during how much time? A. Six to eight hours.

Q. Is it not customary to run the Corning Mills longer than that, about eight hours? A. About eight hours.

Q. Then, would not that Corning Mill have the

capacity of about 1,800 odd kegs output? A. Well, that would be rather overloading it.

Q. At any rate, it was a substantial Corning Mill, was it not? A. Yes, sir.

Q. Do you know what it cost? A. No, sir.

Q. You have that Corning Mill yet? A. No, sir.

Q. What happened to it? A. It blew up.

Q. Yes; now, is not that the reason that you substituted another Corning mill for it—because it was destroyed by explosion? A. No, sir, not altogether.

6053

Q. You did not attempt to substitute anything for it until after it was destroyed, did you? A. No, sir, we used that until an accident destroyed it.

Q. When was it that an accident destroyed it? A. I think in the late winter or early spring in 1910.

Q. So you used it up until the latter part of 1910?

Q. Now, take the glazed building, and barrels, do you know anything about what they cost? A. No, sir.

6054

Q. Have you made any change in those? A. Some changes, yes, sir.

Q. Well, how much? A. Changed—strengthened up the foundations and driving apparatus.

Q. What was the capacity of those glazed mills? A. Well, we never operated all three of them at one time. There were three glazed mills, one of them with rather poor location, and I would say weak heads. We never operated that mill but very little.

Q. Did you not soon after you took over the Buck-eye plant, make some changes for the purpose of making rifle powder? A. Well, there would necessarily be some changes made in little details in the dressing mill, as we call it, in cracking finer grains—but no changes were made for making rifle pow-

der that would not have been made for making blasting powder.

Q. Does it not require a finer grade of powder for rifle powder than it does blasting powders? A. That comes in the dressing of the sieves, and in the kind of material in the cracking of it.

Q. And is not there a difference in the formula? A. Different material, but don't call for any material change in the kind of machinery that you pass the material through.

Q. Will you state in detail, so that we may know exactly how it happened, that you expended the sum of \$100,000 in making additions to the Buck-eye plant from the time you purchased it down to the present time? 6056

Q. In what way did you spend this \$100,000? Give us the details of that. A. I cannot give you details in dollars and cents on the different parts of the work, not the details.

Q. Tell us in detail what the repairs were that you made, so that we may form some conclusion about that. A. We put in a new soda mill and soda stock house. 6057

Q. A new house entirely? A. In the charcoal warehouse, and charcoal pulverizing mill.

Q. That is a new house entirely? A. Well, it was put in the place where the old one stood.

Q. And what happened to the old one, did you tear that down? A. Why, the materials that were being pulverized would leak out through the barrels around the shaft, and the whole thing was getting in such shape that we could not use it.

Q. Then you tore it down and put another one in its place? A. Tore it down and put a new building there, and put new barrels in.

Q. All right; now, what else? A. We put in a keg shop, a keg making shop.

Q. That was a new plant, was it? A. Yes, it was

6058

Franklin W. Olin—Cross

new, and a small warehouse near the railroad for storing materials.

Q. Now this keg plant that you put in, that was for the purpose of manufacturing kegs, going into the business of manufacturing powder kegs? A. Yes, sir.

Q. And you manufactured powder kegs there not only for your own use, but to sell and dispose of them, did you not, as a part of your business? A. No, sir.

6059

Q. How much did this keg plant cost you? A. I should say seven to eight thousand dollars.

Q. That included everything, machinery and all? A. Yes, sir, I should say so.

6060

Q. Well, now, what next? A. Starting in on the line going in the same directions that the crude materials would go through the mill, the Number 1 mill was not changed, and is standing idle still. No. 2 was moved to a new location, so that we could put in the foundations while the mill was in operation, and all of the machinery as I have related, except the two wheels, the two large wheels and the spindle was disqualified and thrown away, and new machinery of a different design put in. That was the same system we followed with all the wheel mills, which was to try and keep some of them in operation while we were rebuilding one at a time.

Q. How about No. 3 wheel mill? A. No. 3 wheel mill is a new outfit throughout, except the wheels and spindle.

Q. As a matter of fact, did not No. 3 wheel mill blow up? A. Oh, yes.

Q. And you had to reconstruct it? A. We had some explosions in those mills.

Q. That was the reason that you had to rebuild No. 3 mill, was it not? A. Well, when it blew up the foundation, the I-beams were bent, and could not be used again.

Q. Well, you could not charge that up to the original construction, would you? A. Well, we were tearing out those same mills and would have this one if it had been blown up.

Q. I will ask you now as the necessary actual expense, No. 3 wheel mill was blown up and you rebuilt it for that reason? A. No, we had to rebuild it, because it was blown up, but it was scheduled for rebuilding, irrespective of this.

Q. You scheduled it anyhow? A. Yes.

Q. All right; what is the next thing? A. The press was a defective press at the time we bought it.

6062

Q. You mean the hydraulic press? A. Yes.

Q. Was this one of the presses that was made by the Allentown people? A. Yes.

Q. And you think that that was not an efficient press? A. No, I should consider it an incompetent press.

Q. Well, how much about, did you pay for a new press to take the place of that one? A. The press and the pump were put in together in the new plant, and cost about \$4,000 for the machinery, independent of the settings and fittings.

6063

Q. And the old press, the Allentown press, do you know whether that has been used in any other place? A. Yes, it is in use now.

Q. Whereabouts? A. In the same plant.

Q. I see. You have not thrown it away? A. No, sir.

Q. All right; now, what is the next thing? A. The Corning mill was rebuilt.

Q. The Corning mill blew up, didn't it? A. Yes, and no particular change was made at that time, but later we changed the construction of the mill somewhat.

Q. You mean after it blew up you changed the construction of the mill when you put in a new Corning mill? A. Yes, sir.

6064

Franklin W. Olin—Cross

Q. Now, what else did you change? A. Stripped out the foundations, and driving line of the glaze mills, made no material change in the barrels, except to repair them, and to stop the use of the light barrels, those with the light heads, and the packing house, which is the last in the line—we practically put in new outfit entirely.

Q. When did you make that change? A. Before we started in to manufacture powder at all.

6065

Q. How much did it cost you to make the change in the packing house? A. Not a great item, \$600 or \$800.

Q. Now, how long did it take you to install that? A. The packing house machinery?

Q. Yes. A. Perhaps thirty days.

Q. Now, you spoke about a new separating process. What did you do with that that was there, how much did that cost you? A. That is the packing house that I am speaking of, the separator.

6066

Q. Now, as a matter of fact, was not that separator put in for the purpose of making rifle powder, so as to make smaller sizes? A. No, sir.

Q. It had nothing to do with rifle powder? A. That would make rifle powder, but the whole building was so weak and vibrated so, that it was not considered a satisfactory outfit. The entire building itself and mill would shake when the machine was running. The driving crank shaft was up on a wooden trestle, and it was changed from that to a solid foundation on the ground, so as to take the vibration out of the mill.

Q. Did you buy at any time any additional land? A. We bought some additional land.

Q. How much additional land did you buy? A. I think we bought between 60 and 80 acres at first, on the east side of the plant.

Q. How much did you pay for that? A. It is not in the amount that I stated.

Q. Now, you testified about a man by the name of Franks who worked for you, as a powder man for some time, I believe? A. Yes, sir.

Q. You stated that he had worked for you for a long time? A. Yes, sir.

Q. Do you know anything at all whether he had worked for the Buckeye Powder Company? A. I do not.

Q. Would you say he did not? A. I would not say, sir.

Q. Now you regarded him as a perfectly competent man? A. Why, at times the fellow was troubled with drinking, and I should not consider him competent at those times. 6068

Q. I will ask you to state whether or not, on a certain occasion, due to the incompetency of your foreman, you had about 25,000 kegs of powder that were defective and became solid, and caked in the kegs, so that you had practically to destroy and throw away this whole amount?

Q. I am speaking now about your foreman? A. The Buckeye plant.

Q. In the Western Powder Company's plant. A. I do not recall any such experience. 6069

Q. Did you ever have any such experience? A. No, sir.

Q. Did you ever have such an experience at all in connection with your operation since you have taken over the Buckeye Powder Plant, where a large batch of your powder proved to be faulty, and caked in the kegs? A. I have had that experience, and it occurs at all plants.

Q. That happens at all plants? A. Yes, to some degree.

Q. Now, how much was it at this particular time, or can you recall any particular time? A. I do not recall the particular time to which you refer.

Q. Will you state how much powder there was

6070

Franklin W. Olin—Cross

at any time, that you found in this condition. A. I cannot state that.

Q. It was a very large amount, was it not? A. I do not remember the circumstances.

Q. Do you know of a man by the name of Tinlin? A. Tinlin, I know a man of that name.

Q. Did he at any time work for you in the capacity of a foreman? A. He was a salesman.

6071

Q. Did he at any time ever make any recommendation to you concerning powder, which recommendation you followed, and which proved to be a loss to you? A. We may have experimented with some ideas that he presented. I would not consider Mr. Tinlin versed in the manufacture of powder, but he may have brought something in—something about the powder that we may have tried.

Q. And did not you have considerable loss, on account of making powder which he had recommended to you? A. No very great loss.

6072

Q. No very great loss. Now, did you at any time, from 1908 down to the present time, operate your mills at full capacity? A. Yes.

Q. When was that, what period? A. That statement that I supplied there shows the output to much better advantage than I can state it from memory.

Q. Can you state now when it was you say you did operate to the full capacity, I would like to have you state. A. Largely through the late fall and winter season we will be busy on blasting powder.

Q. Can you make as many kegs of rifle powder per day as you can make kegs of blasting powder? A. No, sir.

Q. So that when your mills were engaged in making rifle powder, your capacity as to number of kegs would be considerably less, would it not? A. Yes.

Q. And is it not a fact that the capacity as to

number of kegs of the Buckeye Company's plant was very much reduced when you installed the making of rifle powder, as to number of kegs? A. As to number of kegs, it would be reduced on rifle powder, yes, sir.

Q. Now you stated when you were asked by Mr. Button if you were willing to state something in regard to your net profits, and you did say, somewhat reluctantly, as I should judge, but you came with the figures, I will ask you to state at whose request you brought the figures here, upon which you gave the information? A. Nobody's.

6074

Q. At nobody's request, you brought it on your own initiative? A. They were in the files that I asked for.

Q. If you were not forced to bring that information, why did you do it voluntarily? A. It was in the file that was given to me, when I asked for it at my office.

Q. And you did not do it at anybody's request? A. No, sir.

Q. Now, you gave a statement showing certain profits, which you had made over a certain period; were those profits gross or net? A. Net profits.

6075

Q. Those were net profits. You also were interrogated about a salary that you paid to Mr. Waddell. Will you state whether or not at that time Mr. Waddell's two sons were in your employ? A. Yes, sir.

Q. And did they get their salary monthly? A. I think they did.

Q. You say this salary that was paid to Mr. Waddell was all of the same transaction with your purchase of the plant? A. I think it was all worked out in the same period of time.

Q. Now, as a matter of fact, did not Mr. Waddell make you a separate and distinct proposition in writing? A. It is separated from the proposition on the plant. Yes, sir.

6076

Franklin W. Olin— Redirect

Q. Now, was there anything in the fact that you gave him notes for the payment of his salary, that had anything to do with the making of that contract with you to employ him. Would you have employed him at the salary which you gave him, if you had to pay him cash? A. Well, I cannot say as to that. We were short of funds at that time.

Q. It was for your convenience, was it not? A. It might have been we were short of funds in purchasing and furnishing the working capital for that plant and paying for it, and we managed everything we could, to make our cash go as far as it would.

Q. Then it was for your convenience that the arrangement was made, so that you had time within which to pay him this salary? A. It might have been so.

Re-direct examination by Mr. Button:

Q. During the time that you were paying Mr. Waddell those \$12,000 of notes, you were making about 100,000 kegs of blasting powder, were you not, in that year, according to this statement? A. Yes, sir.

Q. Now, did you find it necessary to fill Mr. Waddell's place at the end of the year? A. Why, that was the end of our contract with him.

Q. Did you hire somebody else to take his place? A. Yes, sir.

Q. Who did you hire? A. Mr. Walter H. Allen.

Q. Do you recollect the salary what you paid Mr. Allen? A. I am quite sure—it was \$1500 a year.

Q. Now, at the same time that you made the arrangement for this \$12,000 of notes, you made an arrangement to pay Mr. Waddell's two sons a salary for a year, do you recollect what those salaries were? A. I think M. C. Waddell, the son that was at the factory was \$1500 a year. I think the other

son that was in the office was not more than that, and I am inclined to think a little lesss.

Q. And when the year was up, they all quit—did they or not remain? A. I am not sure that Mr. M. C. Waddell, who was serving us at the factory, quit at the same time as Mr. R. S. Waddell, Senior, but Mr. R. S. Waddell, Junior, that was in the office at Peoria terminated their employment.

Q. The \$75,000 you paid for the property was a lump-sum price, there was no distinction between the land and buildings, I take it? A. No. A lump price. 6080

Q. Now, what was the general capacity of the mill for blasting powder? A. Well, that would vary according to the parties that were running the mill. You can have the capacity of the mill anything you see fit, if you put the powder through. It is a difficult matter to state capacity. Ordinarily, I should say, that mill was competent to make 800 kegs of powder.

Q. Is the Schaghticoke a very old mill? A. Yes, sir. 6081

Q. Now, you have no specific recollection of buying buckeye powder, I understand, from the Buckeye Powder Company? A. No, sir.

Q. You simply say you may have done so? A. Yes, sir.

Q. Was your Equitable mill built for the purpose of fighting the Phoenix Mill? A. No, sir.

Re-cross examination by Mr. Abbott:

Q. In making this arrangement with Mr. Waddell, which you say terminated after one year, was or was not that agreement made for just one year. Was not that the understanding? A. I think so.

Q. And you were not bound to employ him longer, nor was he bound to remain? A. Yes, sir, that is all.

6082

John F. Pierce—Direct

JOHN F. PIERCE, called as a witness for the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Will you state to the jury what your relation to the powder business has been and when you began and what your experience is? A. I began in 1875, practically, working in mills. I worked for the Hazard Powder Company about two years and then went to the Austin Powder Company and worked 17 years.

Q. What was the capacity of the Austin? A. When I left them they had two plants. The two plants ran, I think, about 1,600 kegs a day.

Q. What was your position with the Austin Company? Manufacturing sporting powder.

Q. Did you have the actual charge of manufacture? A. No; there was a superintendent there, but I had charge of the processes it went through.

Q. Were you familiar with the machinery used in that regard? A. Yes, sir.

Q. Have you any experience with black blasting powder and the machinery to manufacture that powder? A. Yes, sir.

Q. Did you have charge of repairs to plants and machinery? A. Not at the Austin Company.

Q. Were you familiar enough with the machinery at the time to state whether or not it was in a good condition or not, or what it should be? A. During my 17 years' experience with the Austin, we had but one explosion in the rifle department.

Q. Where did you go after the 17 years? A. I went to the Equitable Powder Company.

Q. What year did you begin with that company? A. 1894.

Q. How long did you remain with the Equitable?

A. I have been with the Equitable up to a year ago last August, principally, most of the time.

Q. What were your duties during that period?

A. I had charge of the East Alton plant.

Q. What kind of powder was manufactured there? A. Black blasting powder.

Q. Did you have anything to do with the building of that plant? A. All the construction work was under my supervision while there at East Alton.

Q. Did you have anything to do with the installation of the machinery? A. I assembled all parts of the machinery that were put in. 6086

Q. You did it all? A. Yes.

Q. When was that? A. From 1894, and I stopped assembling machinery a year ago last August.

Q. Did you have charge of this machinery during all that time? A. I was general superintendent about two or three years, going from plant to plant, assembling, inspecting, directing the manufacture of powder.

Q. What plants did you visit? A. I visited the Fort Smith plant—— 6087

Q. That is Fort Smith, Arkansas? A. Arkansas.

Q. Is that a plant owned by the Equitable Company? A. Yes.

Q. When was that built? A. I cannot tell you exactly just when it was built.

Q. Did you build that plant? A. I assembled every piece of machinery and every gear and started every mill.

Q. What other plants did the Equitable have that you visited? A. The Egyptian plant.

Q. When did you get interested in that? A. I was sent down to inspect it by Mr. Olin.

Q. About when? A. About 1906, I think.

6088

John F. Pierce—Direct

Q. And you were familiar with that and its machinery, were you? A. I put in some improvements in there and operated the machinery for possibly two or three months.

Q. Are you familiar then with the operation of plants as well as their construction? A. Yes, sir, every part of them.

Q. Are you connected with any powder company at the present time? A. No.

6089

Q. At any time, Mr. Pierce, were you commissioned to examine the plant of the Buckeye Powder Company? A. In company with Mr. Olin, Mr. Lent and Mr. Waddell, I visited the plant in 1908, I think in the month of May.

Q. In May, 1908? A. I think it was that month, in the Spring.

Q. How long did you stay there on that trip? A. We stayed on the ground inspecting the mills one day.

6090

Q. How careful an inspection of that plant did you make at that time? A. The mills were not in operation when we arrived on the ground. With the assistance of Mr. N. C. Waddell, as a clerk, I visited all the mills and took measurements of the gear and motors and made as thorough an inspection as I could.

Q. Examined the condition of all the machinery and buildings? A. Yes, sir.

Q. And that was for the purpose of reporting to whom? A. Mr. Olin and Mr. Lent.

Q. And you made a report to them? A. I made a report that evening, and the next evening at the National Hotel in Peoria.

Q. What was the general condition of that plant at that time? A. Very poor.

Q. Fit to run? A. In my judgment; no, sir.

Q. It was not running at that time? A. It was not running.

Q. What is the first building in a powder plant so far as the progress of material from raw material to the finished product goes? A. The charcoal house was the first on the line there.

Q. What is a charcoal house—a place to store charcoal? A. A house for the storage of charcoal.

Q. Did they have one there? A. They had a sort of a corn crib for one and a shed that leaked for another.

Q. A corn crib, with openings in the side? A. Yes.

6092

Q. Is it necessary to keep charcoal dry in order to properly manufacture powder? A. It should be absolutely dry.

Q. Would these buildings keep the charcoal dry? A. No, sir.

Q. What is the result of having wet charcoal on the product? A. It would not work satisfactorily and it pulverizes—cakes on the cylinder, and consequently it cannot be used.

Q. Sticks to the sides of the cylinders? A. Sticks to the sides of the bands.

Q. In your opinion were those fit houses? A. No, sir.

6093

Q. The next is a smokestack. A. The smokestack is next on the line there.

Q. How was that? A. It was a very good stack.

Q. What came next? A. The powerhouse, the boiler house.

Q. How many boilers were there? A. There were two at that time.

Q. First, about the house; in what condition was the boiler house itself? A. The boiler house building was a satisfactory building. The wall was somewhat shaky under the boilers.

Q. What would be the effect of that, if any? A. There would be a settlement, and probably it would disturb your joints on your pipe line.

6094

John F. Pierce—Direct

Q. What about the boilers themselves, as to their condition? A. As far as I could see, they were very good.

Q. How about their capacities, so far as whether they were big enough? A. They were large enough for the work they were doing, but if they were running night and day it would be almost absolutely necessary to install another boiler, which we did the next year.

6095

Q. For what reason would it be necessary? A. To give us ample time to clean and scale a boiler.

Q. How much of an operation is it to clean a boiler; how long does it take? A. From three to four days, sometimes, to scale a boiler properly.

Q. For the boilers they had would it require a shut-down of a portion of the plant, to clean them? A. Well, I don't think one boiler would keep up the operations long.

Q. And you say that later you installed another one to supplement them? A. Yes, sir.

6096

Q. You said something about the walls or foundations under this boiler being bad. Were those repaired later? A. Yes, they were reset.

Q. Next is the engine house down the line? A. The power house.

Q. What kind of an engine did they have? A. A Hamilton-Corliss engine, I think.

Q. What was its condition? A. The cylinder we found was cracked.

Q. Had it been repaired or patched? A. It had been patched; yes, sir.

Q. What effect did that have upon the efficiency of the boiler or of the engine? A. At that time the motive power was strong, although the cylinder was cracked.

Q. Was that repaired later? A. Not while I was there. There was a new cylinder there ready to go in.

Q. They had procured a new cylinder? A. They had bought a new cylinder, yes.

Q. That was later, next year. What is the next house or building? A. The soda mill.

Q. What purpose is that used for? A. It is for grinding the soda to a certain fineness.

Q. And is it used for the storage of the soda, too, raw material? A. Just for the output of the 24 hours.

Q. Did they have machines there known as soda beaters? A. Yes, sir. 6098

Q. How many did they have? A. Two.

Q. What is the purpose of those machines? A. The raw material is fed into the mill and comes out into what we call a dust room.

Q. In what condition was that? A. The beaters were in good condition, that is the machines.

Q. What can you say about the location and economy of that soda mill, the arrangement of that? A. Well, I could not call them modern. The soda, the raw material, was taken up the hill and then came out again in the basement. 6099

Q. That is, they put it up and shot it down the hill? A. Yes, from the cars, just hoist it up.

Q. What is the objection to that? A. It is not economy.

Q. Was it changed later? A. Yes, sir.

Q. In what way, what did you do? A. Built a soda house—a fire-proof building right on the ground.

Q. The same level? A. The same level as the beater.

Q. Is the pulverizing mill next down the line? A. The pulverizing mill, yes.

Q. What did you pulverize in that mill? A. Charcoal and sulphur.

Q. In grinders? A. They are cylinders.

6100

John F. Pierce—Direct

Q. How many cylinders were there? A. I think there were twelve.

Q. How were they? A. Some of them were in very bad shape. They became loose on the head, the shaft went through; the bearings became loosened and caused considerable trouble.

Q. How was the power transmitted by belts. There was one belt outside the building and one inside.

6101

Q. How about that arrangement, as to its desirability? A. It was a very poor and dangerous arrangement.

Q. Why was it dangerous? A. The friction of the belt sometimes getting loose and the charcoal dust almost continuously around there, there was danger of fire.

Q. What should the arrangement be? A. It should be driven with the shaft line or a chain outside the building.

Q. That is something that could not cause friction? A. Yes.

6102

Q. Was that changed later? A. Yes.

Q. You know it was changed, do you? A. I have seen it after it was changed. I did not change it.

Q. Was there anything done to the cylinders themselves; that is, were they changed? A. New ones were put in, with no shaft protruding from the barrels. The chains were cast on to the heads of the bearings. Two of them did the work of the twelve.

Q. Did you put in two instead of the twelve? A. Two instead of the twelve.

Q. What effect would that have upon the amount of labor required? A. It would cut it in half.

Q. Where was the sulphur storehouse? A. Under the charcoal pulverizer.

Q. In this same building? A. Yes, sir.

Q. What about that arrangement? A. It was a very poor arrangement.

Q. Why? A. Well, in the case of fire, if sulphur gets afire it is a pretty hard matter to fight it, on account of the fumes.

Q. Was that changed? A. Yes. There is a fire wall between the storehouse.

Q. Now, next is the wheel mills, as you go down? How many were there? A. Four.

Q. How about their location? A. The location of No. 1 in my judgment was too close to the mill. 6104

Q. How close was it? A. I don't know, but I have seen fire originate there from the passenger locomotive, setting grass on fire, within 150 feet of No. 1 mill.

Q. The others were located all right? A. So far as distance was concerned, yes.

Q. Take No. 1; what was its condition? A. The wall, the foundation, was not heavy enough in my opinion; the I-beams were not deep enough; the bearings of the vertical shaft were too low.

Q. Too what? A. Too low.

Q. How was the power transmitted to that building? A. The power was transmitted from the motor almost direct to the mill, which caused a great many interruptions. 6105

Q. Why? A. It was necessary to shut the motor down to take the charge; and in starting up the mill quite frequently the belt would run off, as the motor was not up to speed, and it was necessary to get about four men to place the belt back on there again, to move those large wheels, weighing about eight tons each.

Q. Did that occur frequently to your knowledge? A. Quite frequently. And sometimes it would occur in the night when there would not be force enough to put on the belt; and it meant that we

6106

John F. Pierce—Direct

would lose the production of that one mill at different times.

Q. You were there later for a considerable period, were you? A. I was there later for six months, at one time.

Q. Was that change finally made? A. Yes, sir.

Q. How about the gears; where were they in that building? A. In No. 1?

Q. Yes. A. They were underneath—underneath driven.

6107

Q. Were they properly arranged? A. I don't think the bridge trees were strong enough, but as the mill was not in operation I could not form an opinion until after I saw it operated.

Q. Were those later changed? A. They were all changed with the except of No. 1 wheel mill.

Q. No. 1 was left as it was, was it? A. It was in 1912, when I left there.

Q. How was the condition of No. 2? A. That was a duplicate of No. 1 with the exception that it was impossible to hold the stand that supports the cheeks—that is, the bearing on the vertical shaft.

6108

Q. What effect has that? A. It allows the wheel to surge. It throws the vertical shaft out of plumb, the right angle shafts coming into the gears are not centered; there is danger of breaking the gears.

Q. Danger to the machinery, you mean? A. I do.

Q. Was that remedied later? A. After it was rebuilt, yes, sir.

Q. How about No. 3? A. No. 3 was a duplicate of the same thing, with the exception the bed was cracked.

Q. What is the bed, the bed plate? A. The bed plate that the wheels operate on.

Q. Is that a heavy construction, or should it be? A. It should be. I don't know the diameter of that

metal, because I could not measure those beds very well.

Q. What is the effect of that defect? A. A cracked bed is a dangerous proposition.

Q. Why? A. You are apt to get a piece of metal, if cracked, under a wheel and produce an explosion.

Q. Was that changed? A. Later on it was changed, and rebuilt.

Q. At that time was this building braced up with timbers or something of the sort? A. There was a reinforcing of it. Some of those I-beams had become twisted and warped. 6110

Q. Was No. 4 a wheel mill of the same character? A. No, sir; the No. 4 wheel mill was put in very good workmanlike shape.

Q. What were the differences between that and the others? A. They had a good deal better bearings for the upright shaft. It was not necessary to slow the motor down, so that the motor was always up to speed. I never had in the year I was general superintendent over that plant—I never had an hour's trouble with that mill. 6111

Q. How about the rate of speed of that mill as compared with the other three? A. It was higher than the other three, and consequently it gave us a little worry about watching it. It used up more water, in manufacturing the powder, that is keeping the powder in the condition it should be kept in, as compared with the other three mills.

Q. That was on account of the variation necessary in the treatment of that wheel? A. Yes.

Q. You could not treat them all alike? A. Yes.

Q. What was the next mill? A. The press mill.

Q. What was that used for? A. For pressing your powder in the sheets, into sheets about an inch and a half thick.

Q. Is that heavy machinery? A. It is supposed to be very heavy machinery.

Q. What kind of a press did he have? A. It is necessary to get a compression of 6,000 pounds to the square inch. That would be the maximum for cold weather.

Q. What was the condition of the building and that machinery? A. The cylinder was cracked. There was a fracture in it somewhere. Later on—I am giving this testimony as I saw it then—I suppose there was a fracture there.

Q. What did you discover later on? A. After the mill was operating?

Q. Yes; what effect did this crack have? A. At a certain pressure the water or oil would ooze out through this fracture.

Q. What effect would that have? A. It was a dangerous proposition with that amount of pressure on.

Q. Danger from what? A. Danger of breaking the press.

Q. Was that changed? A. There was a new one installed later on for that purpose.

Q. What kind of a building was that? A. A very cheap affair; with a great many lean-tos and sheds to it.

Q. Wooden? A. Wooden.

Q. Did the Corning mill come next? A. Yes, the Corning mill came next.

Q. What can you say about that? The condition of that, what was the condition of that, both as to the building and the machinery? A. The Corning mill was a very good machine with the exception of the way it was driven. The rods communicating with the shaker box was attached to the frame of the mill, consequently there was considerable vibration, and it would throw some of the shafting lines out of alignment. A pier should have been built

with rods extended so as to throw all that strain off from the frame.

Q. Was that done? A. It was done later—after the mill was remodeled.

Q. There was just one Corning mill? A. That was all.

Q. How about the glaze mill; does that come next? A. That comes next.

Q. How many of them? A. Three buildings.

Q. Take No. 1. These are the mills in which you have the glazed barrels in which the powder is polished? A. Polished and dried.

6116

Q. No. 1. How many barrels were there? A. Six barrels, I think were in there.

Q. And four barrels in No. 2 and four in No. 3? A. Yes.

Q. Making fourteen altogether. What was the condition of No. 1? A. The objection I had to that was that the gear at the driving line of shafting that drove the barrels were all iron. That should have been filled wheels.

Q. What is the objection to have that kind of iron? A. Danger from fire.

6117

Q. Danger from an explosion? A. Yes, danger from an explosion.

Q. When the powder came to that state in the glaze mill, was it subject to explosion? A. Yes, just as much as it ever is.

Q. Then you considered that dangerous, you say? A. I considered those gears dangerous. The barrels were in good condition, good barrels.

Q. What about the condition of that in regard to the other two mills, Nos. 2 and No. 3? A. We reenforced Nos. 2 and 3 by building piers, for carrying that driving line.

Q. Why was that necessary? A. The driving line was put upon brick on the side of the building and this constant shaking and vibration threw the shafts out of line.

6118

John F. Pierce—Direct

Q. You say you reenforced that by putting in concrete piers? A. Concrete piers under the pillow blocks.

Q. How about the light heads? A. Some of them them were of a light pattern.

Q. What effect did that have? A. I have replaced some of the same patterns in another mill that were cracked. Consequently we were a little afraid of them.

6119

Q. Supposing they were cracked, what would be the result? A. I could not tell that. It would be a dangerous proposition.

Q. Were those replaced? A. No. We never replaced any there. We did not run those barrels.

Q. Did you abandon them? A. Some of them we reenforced the head and used them.

Q. The next is the packing house. The packing house is where the finished product is separated into different sized grains? A. Yes, sir.

Q. And packed into kegs? A. Yes, sir.

Q. Sort of a finishing house? A. Yes, sir.

6120

Q. Will you not describe in a general way what the machinery is by which this separating is done? A. There are two ways of separating the powder. One is a reel, and the other is what we call a shaker, which vibrates this way or that way. (Indicating end motion and side motion.)

Q. Which did he have there? A. He had the side motion shaker.

Q. Is it something like a threshing machine outfit? A. The same thing, a common shaker that keeps vibrating back and forth, either endways or side motion.

Q. Did these different grains drop down between different sized screens? A. The box is filled with four or five or any number of screens that you want to put in.

Q. With different sized meshes? A. Different sizes of meshes.

Q. For the purpose of separating the powder into different sizes? A. Yes.

Q. How many of those machines did he have? A. He had one shaker, and he had another one with reels in it.

Q. Was that in use? A. The reels I don't think had ever been practically used, from the looks of them. I cannot say as to that.

Q. How about this other separator? What was its condition? A. Well, there was some trouble. They used to bring the screens—the steel springs which supported it quite frequently. And the crank shaft was connected with the building, and the building vibrated considerably, throwing the powder sometimes to one side and sometimes to the other, not distributing it all over the sieve. Consequently we could not get a good separation.

6122

Q. Different sized grains in the same batch? A. Yes.

Q. Was that entirely changed? A. Oh, yes.

Q. The building and all? A. The building was there, but it is not in use.

6123

Q. You built a new building and a complete new outfit? A. No. We tore out his reel apparatus. That was there when we bought the plant and installed a separator of our own.

Q. In the same building? A. The two buildings were connected; a tramway ran between the two.

Q. Did these packing houses also have three floors? A. The old one had three floors. The powder came in on the upper floor, and went through the shaker on the next floor, to the packer below.

Q. Was there any objection to that? A. Oh, yes.

Q. What was the trouble with that? A. It is better to have it on one floor, so far as the shaker and the packing house is concerned, so far as the men

6124

John F. Pierce—Direct

are concerned. They should be in sight of their machines and could stop them at once.

Q. That is, they were shut off of a part of the operation could not be seen? A. The shaker could not be seen by the packers unless they went up a vertical ladder to the second floor.

Q. That was changed? A. When they installed the new shaker.

6125

Q. How was the material carried from one building to another in this operation? A. Well, beginning with the raw material, all along the line until it got to the glazing it was carted from mill to mill with horses; that is, on the tramway.

Q. What was the condition or efficiency or otherwise of the tramway? A. It was a bad proposition. It was a cause of a good deal of foreign substance being carried into the mills, as there were no boards for the men to walk one.

6126

Q. What difference does that make? A. Foreign substances coming into a powder mill is one of the greatest things we have to guard against and attend to.

Q. On account of possible explosions? A. Yes.

Q. What was the material of which the tramway was built? A. It is simply cordwood cut into different lengths and that is built or laid upon cinders.

Q. No plank? A. No plank at all.

Q. Why was there not a plank there? A. The gauge was so narrow that it was impossible to put a line plank there and work a horse on the same place.

Q. Your objection is that these cinders and so on were likely to be tramped into the building? A. Yes.

Q. And cause explosions, I suppose? A. There was danger of that, yes.

Q. Where the tramway was in that condition was that leading into the building where the powder was advanced enough so it could be exploded?

A. Yes, it was the worst part of it from the raw material until you get to the glazing.

Q. Is it true that after the powder leaves the wheel mills it is subject to explosion from that time on? A. It is as strong as ever after it leaves the wheel mills.

Q. And this tramway was after that point? A. Yes, sir.

6128

Q. You said that you considered, to begin with, the condition of the whole outfit bad. What would you say as to the condition of it as to economical arrangement for the manufacture of powder? A. There could have been labor saving there by putting in modern devices.

Q. What was the period of six months you mentioned in which you operated the plant? A. From May, 1909, until November.

Q. During that period did you see Mr. R. S. Waddell around there at all? A. On the ground once or twice.

6129

Q. That is all during that entire six months? A. Yes.

Q. Who was the general superintendent there? A. I was the general superintendent.

Q. Was that plant in May, 1908, in a condition where it could be continuously run? A. I did not see the plant until November; after that it was operating.

Q. It was not in operation, then, in May? A. It was not in operation when I saw it.

Q. From your experience, can you give an estimate, Mr. Pierce, of what a fair percentage of depreciation of a powder mill such as this would be?

A. It is about figured five per cent, I believe.

Q. Five per cent per annum? A. Yes.

6130

John F. Pierce—Cross

Q. And would that increase or decrease during shutdowns of the mills? A. The depreciation would increase.

Q. For what reason? A. The nitrate of soda has a peculiar effect on metals, rusting metals; it eats into iron very extensively.

Cross-examination by Mr. Abbott:

6131

Q. Mr. Pierce, what mills have you had experience with outside of those that you named for Mr. Button? A. Hazard mill, the two Austin plants, one at East Alton, and the Equitable, and one at Fort Smith—

Q. I meant outside of those; you have mentioned those already. How was the Hazard plant constructed—to your satisfaction? A. It was an old time plant. That was a water power. It was altogether different from the late plants.

Q. When was it first constructed? A. The Hazard?

6132

Q. Yes. A. I cannot tell you.

Q. Was it not constructed back about as far as 1835? A. I cannot tell you that. I was born there, but I don't remember it.

Q. Then you did not make any investigation of the plant at the Hazard mills? A. No.

Q. After you left that plant, was the next plant you went to? A. The Austin.

Q. Where was that located? A. Cleveland, Ohio.

Q. Did you make an examination of that plant? A. No. I went to work in the mills.

Q. I mean did you make a critical examination of the construction of the plant? A. No.

Q. You do not know how it was constructed? A. Only from observation.

Q. Was that a plant that was up to date accord-

ing to your understanding of modern construction?

A. No, not all of it; part of it was.

Q. They made powder there right along? A. Yes.

Q. And made a good grade of powder right along and continued to make it, did they not? A. So far as I know.

Q. Well, you were part of the organization and you assisted in making powder, so you knew something about that, did you not? Will you answer that? A. Yes, sir.

Q. What was their next plant? A. I went to 6134
their new plant that they installed about sixteen miles from there.

Q. Was that an up to date plant? A. That was at the time.

Q. When was it that that plant was installed? A. That plant was installed in 1890 I think.

Q. 1896? A. 1890, I think.

Q. Is that plant still in operation? A. Yes, sir.

Q. Still making powder? A. I suppose so. I have not seen it.

Q. How long since you have seen it? A. I in- 6135
stalled a press for a corning mill there some six years ago.

Q. Was it running then? A. Yes; very well.

Q. Well, the plant was running and in pretty fair shape? A. I am speaking of the new plant now.

Q. I know. Was that built along the modern lines for a plant? A. Yes, I think so.

Q. And there was nothing in that that you would not like? A. Nothing defective about it.

Q. What was the general line of the machinery they had in that plant so far as the mills were concerned? A. Du Pont.

Q. Du Pont? A. Yes, sir.

Q. Were any of them Olin machines in that

plant? A. Not until later. I installed a corning mill in there.

Q. But that was the only thing they had in there at that time? A. The corning mill and the press.

Q. The next plant was the Equitable? A. Yes.

Q. And that plant you have been connected with practically down to date? A. Since 1894.

Q. That plant was constructed largely with machinery that was designed or worked out by Mr. Olin and his associates? A. Yes.

6137 Q. You considered that an up to date plant? A. For strength and durability, yes, sir.

Q. And it was as good a plant as could be made, was it not? A. For his purposes. It did not, perhaps, cost so much money as some other plants.

Q. The machinery you used in there, though, you thought was modern, up to date machinery? A. Good machinery, throughout, yes.

Q. How long have you been connected with Mr. Olin? A. I worked for him twelve years at one time.

6138 Q. Beginning when? A. In 1894.

Q. And you have been connected with him more or less from that time on down? A. Yes, until a year ago last August.

Q. Have you ever worked in any manufacturing plant where powder machinery is made? A. No, sir.

Q. You know nothing about that. Have you been connected with the sales end of any of those plants? A. No, sir.

Q. You have not been interested in that in any way? Who was the foreman of the Buckeye plant when you first went there, do you know? A. Henry Franks.

Q. I would like to take you over this plant again, if you can go with me on a little jaunt the same as you did with Mr. Button. Take this first building,

this charcoal crib, as you call it, and sort of a shed. Is that the first and only time you had seen one built that way? A. It is the first and only time I have seen one built that way for a powder mill.

Q. You have never seen a charcoal house built that way? A. Never.

Q. And when was that charcoal house changed? A. I could not tell. I was not on the ground when it was changed.

Q. Was it changed within a year? A. No.

Q. Two years? A. I could not say. I was there one year. 6140

Q. Is it not a fact that it was not not changed until very recent times? A. I cannot tell.

Q. And you have continued to use the same charcoal house. This smokestack you said you thought was good? A. Yes, I think so.

Q. You did not make any change in it and would not do anything in regard to that? A. Nothing at all.

Q. The boiler-house you said was good but you thought it might have settled a little? A. The walls of the boiler had settled. 6141

Q. Had settled how much? A. Cracked, so that it was absolutely necessary to reset the boilers.

Q. How long did it take you to reset those boilers? A. I don't know. That was let by contract with Cody & Company of Peoria.

Q. When was that done? A. In 1909.

Q. What part of 1909? A. I think it was done in the summer time; but I will not be positive.

Q. Do you not know that it was not done until the spring of 1910? A. Resetting the boilers?

Q. Yes. A. I do not think I was there in 1910. I was there when I reset the boilers.

Q. Well, this was in the spring of 1910 when the boilers were reset. By resetting what do you mean;

6142

John F. Pierce—Cross

what did you do? A. Tore down the brickwork and reset and rebuilt the wall.

Q. What was the expense of doing that work? A. In installing the new boiler, I think that included the resetting of the old ones. I forget what the expense was.

6143

Q. Is it not the reason that you found it desirable to reset the old ones was that you were installing new ones and you thought you could make the old and the new conform better by resetting them all at the same time? A. Well, the walls were shaky. It was necessary to reset them.

Q. It was simply desirable rather than necessary, was it not? A. I think it was necessary—we thought that it was.

Q. But if you had not had this new boiler to install you would not have gone to the trouble of resetting the old ones? A. I don't know. They concluded it was necessary to reset the boilers and install new ones.

6144

Q. And you do not know what the extra expense was in connection with that because it was worked in in connection with the new boilers? A. Yes.

Q. I see. You said that these boilers were good for the work which they were doing. What did you mean by that? I would like to have you make that a little clearer. A. To conform to the plan we had.

Q. I understand, but you said they were good for the work they were doing. They were not put in for any other purpose, were they—except the work they were doing? A. I don't know. I suppose they were not.

Q. But when you found it necessary for some reason of your own to add to the boiler capacity you made this change and put in this additional boiler. Is not that true? A. That would give us an opportunity to clean up the boilers in repair.

Q. Now, as to this Corlis engine—you say the cylinder was cracked. What do you mean by that? I am not acquainted with the details of these machines. Tell me what you mean by that. A. The cylinder is the intake of the steam.

Q. You mean the cylinder is the part of the structure into which the piston rod works back and forth? A. Yes, sir.

Q. Where was that cracked? A. At the base and along the side.

Q. How long had you used it in that form? A. It was used in the year I was there.

6146

Q. And how much longer? A. I don't know. I was not there after that.

Q. Then when you say it was later installed, you do not know whether it was one, two, three or four years, do you? A. I did not say it was later installed. They had the cylinder there to install it.

Q. When was it you think it was installed? A. I don't know. It was there when I went there in 1912.

Q. Oh, it was still there. I will ask you in that connection, is it not often the case, in fact is it not very generally the case, that machinery of this character will sometimes become more or less injured in a manner like that without injuring its efficiency? A. Well, when water comes from the cylinder there is something wrong somewhere.

6147

Q. That may be; but is it not true that in a great many cases machinery of that character will continue to operate very satisfactorily even though there may be some little defect of that kind? A. If it was not overloaded I presume it would.

Q. Yes. Now, then, do you know of your own knowledge of any time when this particular Corliss engine did not operate satisfactorily? A. No, sir.

Q. It continued to operate satisfactorily? A. Yes.

6148

John F. Pierce—Cross

Q. You spoke of this soda mill house. You said that it was not what you would call modern. You did not define that. I would like to have you state in what respect it was not modern. A. The soda mill?

6149

Q. Yes, the soda mill house. A. The dust room—there were two of them; one for each beater. They could use them alternately if they wished. They were pretty low and they used to take the bags from the wheel mill that was covered with powder into the dust room, which I don't think was a very good proposition.

Q. Now you are speaking about the way in which the management there conducted its operations, and I want to know about this particular soda mill house, what there was about it that was not modern. A. The beaters were in the basement. They were not in sight of the men operating them.

Q. And that was the only thing? A. That was a very bad feature about it.

6150

Q. You say that was changed later. What do you mean by that? A. A new building erected, and it was on the same floor as the men operating it.

Q. But you say it was changed later. When? A. I don't know. It was changed when I last there.

Q. When did you last see it? A. 1912.

Q. It was there when you left, was it not, in the same mill? A. Yes.

Q. And so far as you know, it continued up until 1912, when you say it was changed? A. It was changed in 1912, yes.

Q. My understanding of your objection to that millhouse is that it was not economically arranged. That was your main objection to that? A. One of the main objections, yes.

Q. But they continued to use it, nevertheless, for several years after Mr. Olin purchased it, so far

as you know? A. They operated it while I was there one year.

Q. You do not know anything about it after that, until 1912? A. No.

Q. Now these soda beaters, I believe you said, were in good condition? A. Yes.

Q. In that connection I will ask you whether or not a soda beater is in general use in powder mills?

A. Yes, sir.

Q. In all powder mills? A. Yes, for blasting powder.

6152

Q. Is it not a fact that in a good many powder mills they do not have soda beaters at all? That is, they use simply the raw soda, and incorporate it in that way rather than beat it into a mixture? A. I have never been to one of those mills—yes, I have; the Fort Smith plant.

Q. Do you not know that is the customary practice in a good many mills? A. No.

Q. Then you think the mill where you saw that done was exceptional? A. Yes; it was exceptional to me.

Q. How many plants altogether have you visited in the United States? A. About eleven or twelve. 6153.

Q. The next one that Mr. Button asked you about was the pulverizing mill. As I understand it, you had very little to say against the character of that mill excepting that some of the cylinders were loose and caused a little trouble? A. Yes, they caused a little trouble.

Q. In what way were they loose? A. Because the shafts—they went through the barrel heads.

Q. Was that a matter that could be repaired from time to time? A. Oh, yes, you could drive the key after they got loose, but after they got to working on a shaft, the shaft would wear smaller, and you could not keep them tight.

Q. Once in a while you would have a man go and tighten up a bolt? A. Yes.

Q. And keep them tight? A. Yes.

Q. Was that unusual in machinery of that character? A. This was not a bolt; it was a key.

Q. Well, a key, then. And they were tightened up in that way from time to time? A. Yes.

Q. That was not unusual; is it not customary in a plant of that sort? A. They have no shafts in a modern barrels.

6155 Q. In a modern plant? A. No.

Q. But are not there shafts in a good many plants in this country? A. I presume so. I have not seen but very few. The most I have seen are modern cylinders.

Q. How long did that shaft continue in that form? A. Well, I saw it in use there when I was there, when I was last at the presses.

Q. Well, I know, but it was in use up to that time? A. Never any change made, it was a source of trouble just the same.

6156 Q. Never any change made though? A. Not while I was there.

Q. So far as you know up to the present time? A. 1912 it had been changed.

Q. Mr. Pierce, I believe the next criticism you made of the plant was that some machinery was operated by belts. Is that correct? A. Transmission of the power from the motor to the shaft line. I criticise that because there was no clutch between.

Q. You thought it was dangerous and that it ought to have been operated by some sort of a fixed attachment? A. The clutch should have been between the motor and the shaft line, so it would have been unnecessary to shut the motor down when we shut the mill down.

Q. How serious a matter was that so far as mak-

ing the change was concerned? A. It would be the cost of the clutch.

Q. And how much would that amount to? A. Well, I should say possibly three hundred dollars.

Q. About \$300. Was it not customary in a good many plants operating in a similar way to use the belting method? A. Use the belting and the clutch?

Q. And the clutch? A. Yes.

Q. Do you know of any mills where the clutch is not used? A. Not until I saw this one.

Q. Then your judgment was that an expenditure of three hundred dollars was necessary in order to make that a practical method? A. Of starting the mill, yes. 6158

Q. Was there any change made in that? A. Not while I was there.

Q. Do you know whether any change was made at all? A. Yes.

Q. When? A. I don't know when. They were there in 1912 installed with clutches.

Q. You saw them in 1912? A. Yes.

Q. But they had operated in that form until after you left the plant? A. Yes. 6159

Q. Take the sulphur house. You spoke of the arrangement of that as being very bad. A. Yes, the sulphur was stored under the charcoal cylinder.

Q. And you say that since that time, since the plant was purchased, you have put up a fire wall? A. A new building and a fire wall between the charcoal and sulphur.

Q. When was that change made in the plant? A. I could not say.

Q. Can you approximate it? A. It was there in 1912, when I went there in the spring.

Q. But the other arrangement continued in use as long as you had anything to do with the plant? A. The year I was there it continued, yes.

6160

John F. Pierce—Cross

Q. Take these wheel mills. The location of one of them you say was too close to the railroad? A. I think so.

Q. That was simply a matter of location. You thought it would be safer if it was somewhere else, on account of fire; is that right? A. Yes.

Q. Did you make any change in that regard? A. No, sir.

Q. It is still there, is it not? A. It was in 1912, but not in operation.

6161 Q. But, nevertheless, you did use it for some time in that form? A. We used it.

Q. When you left there? A. Yes, sir.

Q. You spoke about some of the beams being set a little too deep in that building. Is that right—the wheel mill No. 1—the wheels were not heavy enough and some of the I-beams were too deep? A. Too light.

Q. Well, that is the same thing. A. Light.

Q. And was any change made in that regard? A. No, sir; not while I was there.

6162 Q. And they are still there so far as you know? A. No. This No. 1 is still there but not in operation.

Q. And these bearings you say were too low. Was any change made in that regard? A. In the reconstruction of the mills, yes, all of them.

Q. Did your statement as to the bearings being too low apply to any other mill or just this one? A. The bearings were too low in Nos. 1, 2 and 3.

Q. In all the mills, then? A. No, I will except No. 4.

Q. Was any change made in that while you were there? A. No, sir.

Q. And as far as you know it is still that way? A. No, it is not that way now.

Q. Then when you saw it in 1912 some change had been made? A. Yes; it was reconstructed.

Q. And you do not know when? A. No, sir.

Q. And you do not know how much the cost was?

A. No, sir.

Q. The power of the motor that was used to operate that mill you say was not sufficient, you say?

A. No. That is plenty of power after you got the mill started.

Q. You have no complaint, then, to make of the power? A. Of the motors? No, sir.

Q. In that connection I will ask you whether or not the electrical machinery in the building was machinery which had come from the General Electric Company? A. I cannot remember whether that was the General Electric or the Westinghouse.

6164

Q. It came from one or the other? A. One or the other.

Q. You said that also that some of these bridge trees were not strong enough? A. They were not solid enough; they should have been concrete.

Q. How long did you use them in that form? A. All the time I was there.

Q. And you do not know whether any change has been made? A. There was in the reconstruction.

6165

Q. But you do not know anything about when that change was made or what the cost was? A. No, sir.

Q. No. 2 wheel mill was a duplicate of No. 1? A. Yes, sir.

Q. And Mr. Button made some inquiries there in regard to certain of the shortcomings in No. 1, and you said those were afterwards remedied. I would like to know when it was that that change was made. A. I don't know what you refer to.

Q. Well, was there anything wrong with No. 2? A. Yes; we could not hold the stand that holds the upright—the vertical shaft.

Q. What was done with reference to that matter, any change made in that? A. We put in some

new bolts and I think every day we had the mill in operation.

Q. And when did you put those new bolts in there? A. Some time in June, 1909, I think.

Q. What was the expense of putting in those new bolts? A. Oh, the expense was nothing comparatively—only two or three dollars.

Q. And that was made as an ordinary repair, was it not? A. Duplicates, yes.

6167 Q. Now, take No. 3 wheel mill. I believe you said the bed of that mill was cracked? A. Yes.

Q. In what way was it cracked? A. Across the face of the bed.

Q. How far? A. When I saw it I think it was all the way across.

Q. When was it you saw it? A. When I examined the plant in May, 1908.

Q. In 1908 it was all the way across? A. Yes.

Q. How thick is this bed-plate? A. I don't know the thickness of those bed plates.

6168 Q. Is it not as a matter of fact about nine inches thick? A. I never installed plates as heavy as that.

Q. Well, do you not think that was an extra heavy bed plate? A. No, I do not.

Q. Then if you know anything about what that bed plate was, so far as its character was concerned, I would like to have you tell me how thick it was. A. I don't know how thick it was.

Q. As a matter of fact, was not the crack to which you refer, simply a very slight crack that only ran a short distance across the bed—a very short distance? A. It ran across from the center to the end of the bed; that is, they are circular in shape—these beds are.

Q. I understand that, but a very short distance, was it not? A. I think it was across the bed, if I remember correctly.

Q. Is it not a fact that the crack was not more than one-sixth of the diameter across that bed and that after the crack came a band was put around on the outside, which was heated red hot before it was put on, so that when it was cold it would contract it, and made it perfectly firm and perfectly safe?
A. I did not know of that. Any cracked bed cannot be as good in a powder mill as a perfect bed.

Q. I did not catch that. A. A cracked bed is not as good in a powder mill as a perfect bed.

Q. Oh, no; we will admit that. How long did you use that bed in that way? A. We used that bed while I was there.

6170

Q. And how long after that, do you know? A. No, sir.

Q. Was it there when you were there in 1912? A. No, sir.

Q. Then you know nothing about when the change took place? A. No, sir.

Q. Now, we come to this No. 4 wheel mill. You say that was good and in first class shape? A. That was in every respect strong enough and never gave us any trouble.

6171

Q. Thoroughly workmanlike. You spoke something about the rate of speed at which these various mills operated and some of them you thought were operated at too high speed? A. No. 4 was a little higher than the rest.

Q. What kind of a machine was it, what kind of power did you use to operate that? A. A motor.

Q. An electrical motor? A. Yes, sir.

Q. Do you not know that an electrical motor is susceptible of being regulated so that it will run at higher or lower speed with very little adjustment? A. No; I didn't know it—to get the power out of it.

Q. If that is a fact, then you could have regulated that to have made it run a little faster or a little slower, could you not? A. I could not have done it.

6172

John F. Pierce—Cross

Q. No, but electricians do those things very readily, do they not? A. I don't know.

6173

Q. Now, this press mill you spoke of, I wish you would describe to the jury as near as you can, so they may understand just what that press mill is. I think it is an important point for you to get that clearly before the minds of the jury if you can. A. Well, there is a cylinder with a ram connection eighteen inches in diameter—the ram is. The powder is placed in a square box, with aluminum plates, probably an inch and a half apart, filled with powder. Pumps were started to pump the water into this cylinder, forcing the ram out. It is necessary at the same time to run up a pressure of 6,000 pounds to the square inch. That is in extremely cold weather—to get the consistency of the cake to enable us to grain it. At 4,000 pounds pressure the cylinder leaked.

6174

Q. Do you know what the pressure was that was guaranteed? In the first place, I will ask you who it was that manufactured this press mill? A. I don't know that.

Q. Was it not the Allentown Company? A. I could not tell that.

Q. Do you know what kind of a design it was commonly known as? A. A horizontal hydraulic press.

Q. Was it not a mill that was in common use by what is known as the Laffin & Rand mills? A. That I would not know.

Q. In other words, was it not a mill that was generally regarded as being one of the best in the powder manufacturing trade? A. The style—the pattern of the press was all right, but they have increased the strength of the cylinders by substituting steel. I think that was a cast iron cylinder. I won't be positive, though.

Q. Do you not know, as a matter of fact, that it

not only was not cast iron but was a steel cylinder made by the Bethlehem Steel Works, which are supposed to be the best steelmakers in the world?

A. I don't know it.

Q. The steelmakers that make the steel for the battleships? A. I did not know that.

Q. Now, do you not know also that that press mill had what was called a factor of safety of 7? Do you know what that means in connection with a press mill? A. No, sir.

Q. A factor of safety in a case of this kind, to illustrate it, would be where the mill had a capacity of 400 to 500 tons, and the mill is made for the purpose of producing four or five hundred tons, but it is guaranteed to produce seven times that much if necessary and up to that point it is considered perfectly safe; is not that right? A. I do not consider that cylinder was safe under extreme pressure, owing to the fracture in it.

6176

Q. Very well. Then will you state why you did not so consider it? Did you ever make a test of it beyond 6,000 pounds? A. No.

Q. Then it was merely your judgment? A. Yes.

6177

Q. If the Allentown Machinery Company gave a guarantee on that, guaranteeing it to stand seven times that pressure, your judgment might be wrong in that, might it not? A. Possibly, yes, sir.

Q. Was any change made in that press mill? A. Nothing while I was there, only just ordinary repairs.

Q. But you said it in answer to a question of Mr. Button that it was changed later on, but you do not know when that was? A. No, sir.

Q. You saw some change there in 1912? A. There was a new press installed for that work.

Q. You said that there was a crack in that press mill? Where was that crack? A. I could not locate the crack.

6178

John F. Pierce—Cross

Q. Why did you say there was one then? A. Because the water came through when the pressure was on.

Q. Could you not locate the place where the water came through? A. No, sir.

Q. You cannot conceive of it being possible that the water might be squeezed through? A. It was undoubtedly the pressure, where it would throw it out five or six feet.

6179 Q. When you stated that there was a crack you said that simply as a supposition. You were not able to find the crack. A. We never found the crack.

Q. Then that was a guess. Now, this corning mill, I believe you stated, was a good machine? A. A good machine.

6180 Q. You said that there was something the matter with the shaker box? A. The connecting rods were attached to the frame of the machine, which caused a vibration of the building and the room itself, which would have a tendency to throw some of the shafting out of alignment.

Q. You stated that later on some of it was changed. When was it changed? A. After an explosion, after a blow out.

Q. When was that? A. I think that was in October, 1909.

Q. Then up to that time it was used without any change being made? A. Yes.

Q. Now, we come to your glaze mill. You had three buildings there and one of those buildings, if I am not mistaken, No. 1, which contained six barrels, you thought was good; is that right? A. With the exception of the gears, yes.

Q. What about those gears was wrong? A. I should have substituted a filled wheel instead of iron.

Q. Was that substituted while you were there?

A. No; they were not changed while I was there.

Q. Were any of these wheel mills changed while you were there? A. Not while I was on the ground.

Q. And did you notice at any time when they were changed? When you were there in 1912 did you see them changed? A. I never noticed them in 1912. I installed some new another glazed and put in some filled wheels.

Q. That was in addition? A. Yes.

Q. No change so far as the old ones were concerned? A. Yes. 6182

Q. This packing-house was a place where you separated your powder? A. Yes.

Q. That is where these so-called separators were installed. Your judgment was that there was a different kind of a separator that was desirable; is that right? A. Yes.

Q. And you installed a different kind of a separator? A. Yes, sir.

Q. When was that installed? A. In 1909.

Q. And that was installed, was it not, for the purpose of making a finer grain of powder, such as rifle powder? A. It was installed for the purpose of all grades. 6183

Q. It took in everything? A. Everything.

Q. But originally your purpose was to make rifle powder, which required a very much finer shaker?

A. The principle is the same; the cloth is a little finer mesh.

Q. I understand the principle is the same, but your purpose in making the change was so you could make rifle powder, was it not, and at the same time making this other change you thought was desirable in the way of attachment? A. We made the change, thinking the other did not answer the purpose.

Q. But was it not one of the essential things

6184

John F. Pierce—Cross

which Mr. Olin had in mind when he bought the Buckeye plant to make rifle powder? A. Yes.

Q. For which the plant had not been equipped before? A. Yes, sir.

Q. In order to make rifle powder was it not necessary that there should be a change made in this shaker for the purpose of getting a finer grain? A. There should have been a change in the shaker, yes.

6185

Q. So you would have had to make that change anyhow, and when he made the change he attached it in that way? A. That was our system of attaching it with a pier on the outside. It was all done at once. I have installed three different plants with that same style.

Q. That was the style you preferred? A. Yes, sir.

Q. And what was the cost of that particular change? A. I would not know that. I had nothing to do with the cost.

6186

Q. Can't you tell me, as a practical man, in connection with the building of a plant of that kind, what the cost might be? A. It might be a thousand dollars.

Q. Do you believe it was a thousand dollars in that case? A. It was necessary to tear out a good deal of machinery that cost us a little more there.

Q. You think a thousand dollars would be a reasonable and fair estimate of that? A. That would be a maximum amount.

Q. You spoke about there being something wrong about the track which was constructed, or the walkway along by the tramway. Have I got you correct on that? A. Yes, sir.

Q. My understanding of it was that this walkway was made of cinders; is that right? A. Between the rails, yes.

Q. And you considered that rather dangerous? A. I did.

Q. Did you substitute some other method for that? A. No, sir.

Q. Was there anything ever substituted to your knowledge? A. In 1912 I substituted a new line.

Q. In 1912? A. Foot-boards, so that the men would not have to walk on the cinders.

Q. Oh, in 1912 you substituted that? A. Yes.

Q. So you did something in the way of change when you went there in 1912? A. I installed some new work there, yes.

Q. Do you know anything about whether this walk-way had been changed before you made this change in 1912? That is to say, whether the board walk-way had been substituted for the cinder path previous to this time? A. No, sir, not that I know of. 6188

Q. As a matter of fact, was it not changed once before this? A. Not while I was there.

Q. Do you not know that the cinder path has long been used about powder mills and very generally for the reason that it is very much safer on account of the fact that the powder dust that is carried from place to place does not lie in a consecutive trail, so that it might be touched off at one point or another and run, it would not have that same connection, as it might on a board-walk? A. That is the first plant I have had any operations with that did not have what we call foot-boards to walk on. 6189

Q. Do you not know that explosions have been occasioned by the fact that the constant walking of the men back and forth on these board-walks has left a little trail of powder and that sometimes a match is dropped so that it touches off the powder in one of these places and it runs to some point and causes an explosion? A. I never knew of it.

Q. You never knew that to happen? A. No.

6190

John F. Pierce—Cross

Q. Do you not know that that very thing happened in the Buckeye Powder plant one time? A. Not while I was there.

Q. You do not know that was the reason why they preferred the cinder trail? A. No.

6191

Q. You spoke about some of these devices which you have suggested that were changed from time to time, or rather, where changes were made in 1912, which, you say, were more modern or better labor saving in one way or another. Now, I will ask you whether or not your judgment in that regard is not influenced by the fact that you yourself have used a certain particular grade of powder-making machinery from time to time? A. That certainly has some effect.

6192

Q. Yes, and is not that particular grade of machinery which you have used from time to time and these various devices you speak of, machinery which is manufactured by Mr. Olin or manufacturing concerns in which he has some interest? A. Yes, most of this machinery that I have installed was manufactured by Mr. Olin.

Q. And is it not a fact that the desire on his part, so far as you have knowledge of his desire, for the making of certain of these changes at the Buckeye Powder plant, was for the purpose of installing the kind of machinery that he had used in his other plants and which he himself had manufactured? A. The inspiring influence for the change was he undoubtedly thought it was a safer proposition.

Q. And he, as he thought changes were necessary, either for the purpose of making repairs, or wherever changes became necessary, for instance on account of explosions, would substitute such machinery that he himself manufactured? A. Yes, sir.

Re-direct examination by Mr. Button:

Q. At the present time you are not an employee of the Equitable or the du Pont Powder Company?

A. I am not employed by any of them.

Thereafter the following persons were called and duly sworn as witnesses for the defendants and the depositions of each of said persons was taken, returned and read to the jury:

Daniel Taylor, a coal operator, operating under the firm name of Howarth & Taylor, of Edwards, Illinois. 6194

Olive Taylor, wife of Daniel Taylor, an associate with her husband as a coal operator under the firm name of Howarth & Taylor, of Edwards, Illinois.

Samuel P. Winters, Manager, Salesman and Treasurer of the Winters Coal Company, of Peoria, Illinois.

Harvey L. Byers, a Director and Manager of the Morgan Valley Coal Company during the year 1903 to 1909 at Morgan Valley, Iowa. 6195

George M. Boyd, a member of D. M. Boyd Brick & Tile Company of Knobsnoster, Missouri.

Cassius C. Thomas, President of the Thomas Coal Company of Evansville, Indiana.

John Galbraith, Manager of the Brady Coal Company, Pontiac, Illinois.

Samuel F. Pascoe, Secretary of the Southeastern Iowa Coal Company of Hamilton, Iowa.

Robert Woods, a member of the Brady Coal Company, a partnership, of Pontiac, Illinois.

Oscar Boetticher, Vice-President of Boetticher & Kellogg of Evansville, Illinois.

William A. Linn, Assistant Purchasing Agent of the Chicago, Milwaukee and St. Paul Railway Company, at Chicago.

Defendants' Depositions.

Edward Shirkie, President and Treasurer of the Indiana Fuel Company of Terra Haute, Indiana.

William M. Carter, Vice-President of the Sexton Building Material Company of Jolia, Illinois.

Glen W. Traer, President of the Illinois Collieries Company, of Chicago.

Gordon Buchanan, President of the Wilmington Star Mining Company of Coal City, Illinois.

Isaac Waltling of Peoria, Illinois.

Samuel V. Sholl, Secretary of Sholl Brothers Coal Company of Peoria, Illinois.

James D. Findley, Superintendent of the Monarch Coal Company of Farmington, Illinois.

David Z. Thrush, Manager of the Monarch Mining Company of Farmington, Illinois.

Warren Pye, Manager of the Colyer Co-operative Coal Company of Peoria, Illinois.

Charles L. McCoy, Purchasing Agent for James McCoy Company of Peoria, Illinois.

Archibald T. McMaster, Manager of the Olympia Coal Mining Company of Edwards Station, and Manhattan Fuel Company of East Peoria, Illinois.

Herman Koeppel, Manager of Colyer Co-operative Coal Company of Bartonville, Illinois.

Lawrence C. Higbee, Overseer of Wyoming Coal Company, of Wyoming, Illinois.

Frank Jack, Secretary and Treasurer of Isaac Walter Hardware Company.

Jacob Giebelhausen of Peoria, Illinois.

Patrick Martin of Limestone, Illinois.

Walter B. Ballentine of Wyoming, Illinois.

Frederick C. Carter of Peoria, Illinois.

James Pendergast of Galesburg, Ill.

Henry Seffer, Manager of Bell Coal Company, of Peoria, Illinois.

Stephen A. Drake, President of the Canton Coal Company, of Canton, Illinois.

Defendants' Depositions.

6199

George A. Hibbard, member of Hibbard Snedden & Company, of Peoria, Ill.

George A. Marshall, of Cuba, Illinois.

Louis Hefeld, operator of clay pits for F. R. Carter Brick Company, of East Peoria, Illinois.

Benheart Heintzman, of Heintzman Brothers Coal Company, a partnership, of Bartonville, Illinois.

Edward Mohn, of Mohn Coal Company, a partnership.

George W. Hatch, President of Green View Coal & Mining Company. 6200

Louis Blank, of Fisher & Blank, a partnership, of Limestone, Illinois.

Edward Marston, of Fair Oaks Coal Company, a partnership of Peoria, Illinois.

Albert E. Whitehead, Purchasing Agent of Norris Coal Mining Company, of Canton, Illinois.

James Dalton, of Elmwood, Illinois.

George Westerby, of Peoria, Illinois.

Samuel Taylor, of Taylor & Son, Princeville, Ill.

Will V. Willis, Assistant Secretary of Norvell-Shapleigh Hardware Company, of East St. Louis, Ill. 6201

Alexander Hamilton, President of Gartside Coal Company, of St. Louis, Mo.

William Reidelberger, Jr., Secretary of Joseph Taylor Coal Company, of Ofalon, Illinois.

Thomas Meek, President of F. M. Meek Coal Company, of Marissa, Illinois.

William Boehmer, Secretary of Boehmer Coal Company, St. Louis, Mo.

Marion T. Raumbauer, of Novinger, Mo.

Frank W. Miles, Manager of Hydraulic Pressed Brick Company, of St. Louis, Mo.

William S. Scott, President of Missouri and Illinois Coal Company, of Ferguson, Mo.

Defendants' Depositions.

John J. Ward, Superintendent of Kansas City, Midland Coal & Mining Company, of Novinger, Mo.

Ivan B. Grant, Manager Great Northern Fuel Company, of Novinger, Mo.

John Alexander, Manager Chicago-Herron Coal Company, of Murphysboro, Ill.

Edmund C. Donk, President of Donk Brothers Coal & Coke Company, of St. Louis.

6203 George W. Soloman, President of Black Diamond Coal Company, of Springfield, Illinois.

Edward H. Buckley, Secretary Sangamon Coal Company, Springfield, Ill.

Patrick Murphy, President Capital Coal Company, of Springfield, Illinois.

David A. Watson, Manager Lincoln Park Coal & Brick Company, Springfield, Illinois.

Thomas Axford, Superintendent of South Mountain Coal Company, of Petersburg, Illinois.

Otto F. Lenz, Vice-President and President of Petersburg Coal Mining Company, of Petersburg, Illinois.

6204 Silas A. Shafer, President and General Manager of Assumption Gold Mining Company.

August Reents of Reents and Brothers, a partnership, of Krann, Illinois.

George C. Kanne, member of East Peoria Brick Company, a partnership of Peoria, Illinois.

David T. Sanders, of Peoria, Illinois.

George R. Hess, of Peoria, Illinois.

Alexander Furst, Manager of Jobst-Bethard Company, Peoria, Illinois.

Timothy E. Gapen, Manager of T. E. Gapen and Company, a partnership of Sparland, Illinois.

Fred G. Bader, President Astoria Woodland Coal Company, of Astoria, Illinois.

Erasmus G. White, of the Lincoln Coal Company and Lincoln Mining Company, of Lincoln, Illinois.

Olive Taylor—Direct

6205

Thomas Simmons, of Canton Union Coal Company, a partnership, and President Simmons Coal Company, of Canton, Illinois.

John Gallaway, of Reeves & Gallaway, Glasburn, Ill.

August F. Metzler, of Mackinaw, Illinois.

Henry Vonach, Cuba, Illinois.

Frank O. Pittman, of Cuba, Illinois.

James F. McElwee, Secretary and Treasurer of Maplewood Coal Company, of Peoria, Illinois.

6206

Deposition of OLIVE TAYLOR, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mrs. Taylor, what relation do you bear to Mr. Daniel Taylor, of Edwards, Illinois? A. He is my husband.

Q. How long have you lived at Edwards? A. More than 30 years.

6207

Q. Between the years 1903 and 1908, what business was your husband engaged in? A. The coal business.

Q. Was he an operator? A. Yes, sir.

Q. Of coal mines? A. Yes, sir.

Q. Under what name was the coal mine operated? A. Howarth and Taylor.

Q. Did you in any way assist Mr. Taylor in the conduct of his business? A. Yes, sir.

Q. You assisted him? A. Yes.

Q. In what capacity did you render assistance? A. As secretary.

Q. As secretary of the company, did you have anything to do with the keeping of the books? A. I kept them all.

6208

Olive Taylor—Direct

Q. Among the documents of the coal company, were there any documents kept by you which recorded the number of tons of coal mined by keg of powder? A. Yes, sir.

Q. What would you call that; was there any technical name given to those records, that you know of? A. No, I don't think so.

Q. No special name given to them? A. I don't think so; but we had to give a report every year to the State.

6209

Q. Then those records were kept by you in order to transmit a report to the State Government? A. Yes.

Q. Where was the office of Howart and Taylor with reference to the mines? A. Well, all the book work was done in our home; we had a weigh office, where the coal was weighed at the mines.

Q. Do you recall at any time, whether there was used in the mine a powder known as Buckeye powder, made by the Buckeye Powder Company? A. Yes, sir.

6210

Q. Will you state whether you know, of your own knowledge, whether there was a test of that powder made in the mine of your husband? A. Yes, sir.

Q. Who kept the records of that test? A. I did.

Q. Can you state the year that that test was made? A. No, sir, I wouldn't swear to it; I know it was 1904, but I wouldn't—

Q. Well, in swearing, Mrs. Taylor, you have to give the best of your recollection, and I am only asking you for your best recollection of when the test was made. A. It was made in the late spring of 1904, to the best of my recollection.

Q. How long a test was that? A. About three months.

Q. Do you know how that test happened to be

made; what was the reason of making the test?

A. Yes, sir.

Q. What was it?

Q. If you have a reason, state the facts upon which you base that reason. A. The men wanted Buckeye.

Q. Now, what powder had you been using in the mine before that? A. I couldn't say, just immediately before, as we had used the Hazard and the Lafin and Rand and the du Pont, but which one we used just before, I don't recall.

6212

Q. During this test of the Buckeye powder in the mines, was there any other powder than Buckeye used? A. No, sir.

Q. Do you know where the records of this test are? A. We burned them.

Q. What was the occasion of your burning them, and when did you burn them? A. We went out of business in September, 1908, and we burned them. Let me see; well, I couldn't tell just when it was we burned them. We leased the mine the first of September, and we left Illinois the 8th of September; it might have been during that time or a little previous, but it was before the 8th of September.

6213

Q. Will you state, to the best of your recollection, what the records of this test show as to the tonnage obtained by each miner per keg of Buckeye powder? A. With the powder we had used previously—

Q. I am asking you about the Buckeye now. A. I don't know how to answer that.

Q. Just what did the test of Buckeye powder show? A. Between 13 and 14 tons to the keg.

By Mr. Abbott:

Q. You were asked to state what it showed as to each miner. A. I couldn't, not without our records.

6214

*Olive Taylor—Direct**By Mr. Katzenbach:*

Q. Can you state the average per keg you got from your miners? A. Our test was with all the miners.

Q. What was the average? A. Between 13 and 14 per keg.

Q. Did you make any comparison of this test with a test for a corresponding three months of any other powder? A. Yes.

6215

Q. With what powder? A. That I couldn't say.

Q. What did that average show? A. Between 21 and 22 tons per keg.

Q. After this test of Buckeye powder was made, did you ever have any conversation with any person connected with the Buckeye Powder Company with reference to it? A. We made the test in the presence of a representative of the Buckeye Powder Company, that is, we figured the test out.

Q. In the presence of a representative of the Buckeye? A. Yes.

Q. Who was that? A. I wouldn't say.

6216

Q. Do you know what position he held with the Buckeye Powder Company? A. He was a representative of the Buckeye Powder Company.

Q. You don't recall his name at this time? A. Not positively.

Q. Was this a man? A. Yes, sir, I can describe the man.

Q. Just describe him. A. He was a very nice, clean looking man, not an old man, and I think he was fair complexioned, and a clean looking man, and the gentleman—

Q. Where did you make this comparison; where did you do this figuring? A. In our home.

Q. Who were present? A. Mr. Taylor, myself, and this gentleman.

Q. What was said by this gentleman and by Mr. Taylor and yourself with reference to it at that

interview, to the best of your recollection? A. He couldn't believe that it would show such a difference, but, of course, he had to accept the proof of the figures.

Q. Just state his words, to the best of your recollection. A. That is as near as I can remember.

Q. Just state what he said, as near as you can remember. A. "I wouldn't have believed there was such a difference."

Q. Have you any knowledge yourself as to what happened after this test was made, as to this demand of the miners for Buckeye powder? A. I don't know as I understand; you see, they refused to use it. 6218

Q. After the test, what did the miners do? A. We didn't use it then; not until they made a better grade.

Q. After the test, what powder did the miners want, if you know? A. Well, I don't know; I know we used the du Pont, and I suppose that is what they wanted, or we wouldn't have gotten it.

Q. You know— A. I know we used the du Pont. 6219

Q. Did you receive the bills and make the payments? A. Yes, sir.

Q. After this test, how many kegs of Buckeye powder, to the best of your recollection, was used by the miners in your husband's mines during the year 1905? A. I couldn't answer for 1905.

Q. You don't know that? A. No.

Q. Do you know for 1906? A. Yes, sir.

Q. How much? A. (Looking at paper.) 51 kegs.

By Mr. Abbott:

Q. Of Buckeye powder? A. Yes, sir, for 1906.

By Mr. Katzenbach:

Q. And during that same period, how many kegs

6220

Olive Taylor—Direct

of any other powder, and what powder was it? A. 2,038 of du Pont.

Q. So you are using a paper; are those the figures you made yourself?

Q. From what did you take it? A. From our bills.

Q. Those were the bills in Mr. Taylor's possession? A. Yes, sir.

6221

Q. Do you know whether or not you kept for your miners Buckeye powder up to the time you went out of business? A. Yes, sir.

Q. Could the miners obtain it if they desired to use it in the mines? A. Oh, yes.

Q. Did you ever do any of the purchasing of the supplies for the mines? A. I did it all.

Q. After you commenced to use Buckeye powder in your mines in the year 1904, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company, with reference to Buckeye powder, to your knowledge? A. No, I don't think I did.

6222

Q. Have you the records of any other year of Buckeye powder used in the mines, and of du Pont powder, as used in the mines? A. 1907.

Q. What was that? A. 820 kegs of Buckeye.

Q. How much of the du Pont? A. 2,600.

Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demnad for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name

of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Mozham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the following corporations: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in the question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth and Taylor, not to purchase powder of the Buckeye Powder Company?

6224-10

6225-10

Mr. Abbott: The question is objected to on the ground it is irrelevant and immaterial, that it calls for a conclusion of the witness and not for a statement of fact and gives no opportunity for cross-examination of the witness concerning the fact, if any exists, upon which she bases her opinion. It is also leading, in that it suggests the an-

6226

Olive Taylor—Direct

swer. We also object because it is incompetent, in that it usurps the prerogative of the Court and jury and calls for the mental attitude of the witness. Also because it calls for an expert opinion and the witness has not been qualified as an expert; and even if so qualified, the facts and circumstances involved in the issue are not stated so as to form an intelligent basis for the hypothesis. It also calls for a declaration favoring the defendants, and the answer of the witness necessarily constitutes a self-serving declaration by the defendant.

6227

Said objection was overruled to which ruling the plaintiff by its counsel then and there excepted and said exception was allowed.

John C. Bellstab,
Judge

A. They never tried to induce us not to buy it.

Q. Now, you keep the books, I believe, and you went over the bills that were submitted? A. Yes, sir.

6228

Q. I show you a number of bills which have been marked "Exhibit D. 10," and I will ask you to glance over those, and state whether or not they were bills received by you or by your husband in the course of his business, to your knowledge? A. Yes, sir.

Q. They were? A. Yes.

Q. When Buckeye powder was delivered to the mine, was there any additional charge for freight or cartage, or anything of that kind? A. No, sir.

Q. No such charge? A. No.

Q. I show you a number of other bills, which have been marked for the purpose of identifying them, "D. 11," and I ask you whether or not, to your knowledge, you know those bills were received

by your husband in the course of business? A. Yes, sir, that is my writing; that is mine, and that is mine (indicating), yes, sir.

Q. Will you state whether those bills show the purchase of powder— A. They do; this is my deduction of the freight, 2 per cent.

Q. And your handwriting? A. Yes, sir.

Cross-examination by Mr. Abbott:

Q. This gentleman you speak of, who was representing the Buckeye Powder Company, you stated he was present during the trial? A. During the figuring of the test; the trial was made in the mine. 6230

Q. He wasn't present at the trial; he didn't see the powder used in the so-called trial or test, did he, to your knowledge? A. I don't know that he did.

Q. He did not? A. I suppose not.

Q. All that you wanted the Court to understand was, that he was present at the time when you and your husband went over certain figures? A. Yes. 6231

Q. Were you, yourself, acquainted with the method of conducting that trial or test; did you know anything about it yourself, personally? You are not a miner yourself, are you? A. No, sir.

Q. All that you know about the result of the test is what you saw in the figures that were given you? A. The Miners' Bulletin showed it.

Q. You don't know about how that test was conducted, and how they made up their bulletins, personally? A. I don't hardly know how to explain. The powder went into the mine and they used it.

Q. Did you send it in yourself? A. No, but I saw it sent in several times.

Q. And you kept track of the coal when it came out? A. Yes.

C6232

Olive Taylor—Cross

Q. You checked it up? A. Yes, sir, I checked up the bulletins.

Q. You didn't go out in the mines and make the bulletins and weigh the coal? A. I weighed the shipped coal, not the mined coal.

Q. You took the miners' bulletins and checked it up? A. Yes, sir; we copied them into the book, and we took each man's tonnage for this length of time and made our test in that way, with this gentleman.

6233 Q. But you yourself do not know anything about how this coal was produced, excepting as the returns were made to you by the men in this bulletin? A. No, I didn't see them fire the shots. I saw the sheets.

Q. And you didn't keep account of it in any way, only as a statement was made by somebody, and then you entered it on your regular books? A. Yes, sir.

Q. This trial that you speak of, you say was held in the spring of 1904? A. That's my recollection; that figuring was done in the warmer weather.

6234 Q. And the total amount of kegs of Buckeye powder and du Pont powder, which you gave in answer to questions of counsel, you made up from your papers which had been introduced here in evidence? A. Yes, sir.

Q. Other than that, you have no information upon that subject? A. No, sir.

Q. Is that right? A. Yes, but those are not quite complete; there are several other bills that we found afterwards, both of the Buckeye and the du Pont.

Q. Are those papers you say you have found since, similar to these? A. Yes, just bills like that.

Olive Taylor—Redirect

6235

Redirect examination by Mr. Katzenbach:

Q. Are they among those? A. No; it would just increase the number of kegs we got from each company, that's all.

Q. Mrs. Taylor, will you state just what sheets you meant when you stated that you took the miners' sheets or papers and entered them upon the books, and what they showed? A. The daily output of each miner.

Q. Who handed those to you? A. The weighman. 6236

Q. In whose handwriting would they be? A. The man that weighed the coal.

Q. In his handwriting? A. Yes.

Q. In the weighing of coal, would the miner superintend the weighing of his coal with the weighman? A. It was simply the work of the weighman.

Q. The miners weren't there? A. They had a check weighman.

Q. So that there were, in fact, two weighmasters, one for the miner and the other for the operator? 6237

A. Yes, sir.

Q. Those sheets or memoranda, were they handed to you by the weighmaster? A. Sometimes I went and got them.

Q. Did they find their way to you? A. Yes, sir.

Q. What did you enter them on? A. On small books.

Q. And after entering them on the small books, did you enter them anywhere else in any larger books? A. The payrolls were all based on those.

Q. After the payrolls were made, were these entered into other books by you at all? A. No.

Q. They were not? A. No.

Q. Those small books that you entered them on on the sheets, those which the weighmaster either

6238

Olive Taylor—Recross

gave you or delivered to you, where are they? A. Burned.

Q. And those from which you figured this test, are they burned? A. Yes, sir.

Recross-examination by Mr. Abbott:

Q. Do you know whether, during the period of this so-called trial or test, what the conditions were in the mine as to any special difficulties which the miners could have encountered in the use of the powder; do you know of any difficulties, of your own knowledge? A. The conditions were the same.

Q. Do you know that, of your own knowledge? A. Yes, sir.

Q. Did you go into the mines? A. No, only the tonnage showed.

Q. You only knew from what came up out of the mines the conditions inside? A. Yes, sir.

Q. And you only know that what was done in the mine, by reason of what was told you by miners who did that work? A. No, I had the sheets to show me.

Q. But you didn't see how the work was done in the mine yourself; you didn't go down to see them loading the shots and fire them? A. No.

Q. You didn't follow them up? A. No, sir.

Q. You simply took the returns as they were made to you? A. Yes, sir.

Q. Well, now, do those sheets all show the same results per miner; didn't some miners get a little more or less coal than others? A. Yes.

Q. Well, how do you account for that difference; you say the conditions were the same? A. Some men stay in and work longer than others.

Q. Longer hours? A. Yes.

Q. And will you swear that the only difference between those sheets was due to the fact that some

men stayed in and worked longer than others? A. Some men would get better shots; they would be more particular in placing those shots.

Q. Isn't that true of all miners? A. Yes, sir, some are better miners.

Q. Some are better mechanics? A. Yes.

Q. Did those best miners make mistakes in the way they placed their shots? A. Yes, I guess so.

Q. And that is with any grade of powder you will get a less tonnage upon some occasions per keg of powder, than you will on other occasions with the same grade of powder? A. Yes, sir.

6242

Q. That is absolutely true? A. Yes, but I think when you take a three months' test, that ought to prove which is the better powder.

Q. Answer the question.

(Stenographer repeats question.)

A. Yes, sir.

Q. Awhile ago, on direct examination, you were asked a question with reference to whether you were induced or influenced to abandon the use of Buckeye powder by a certain large number of persons, associations and corporations, whose names were read to you by counsel; do you recall the question? A. Yes, sir.

6243

Q. Do you know all of those persons whose names were read to you? A. No, sir.

Q. And all of those corporations and associations? A. No, sir.

Q. Then, how were you able to answer so promptly that question in the negative as you did? A. Had a gentleman come to influence us not to buy Buckeye powder, I should certainly have known it.

Q. You are basing your statement that no one influenced you, upon the fact that no person came

6244

1906
Daniel Taylor—Direct

1159

to you personally and asked you to abandon Buck-eye powder in so many words? A. They didn't.

Q. And that is the reason you made that statement? A. Yes, sir.

Deposition of DANIEL TAYLOR, a witness produced on behalf of the defendants, being duly sworn, was as follows:

6245

Direct examination by Mr. Katzenbach:

Q. Mr. Taylor, where do you live? A. Edwards, Illinois.

Q. About what distance is that from Peoria? A. Thirteen miles.

Q. How long have you lived at Edwards? A. About 30 years, or 31.

Q. Between the years 1903 and 1908, what business were you engaged in? A. A coal operator.

Q. Where were your mines located? A. At Edwards.

6246

Q. How long were you an operator; when did you commence and when did you cease? A. I think I commenced about 1896; in 1894 or 1896.

Q. Are you still engaged in the business? A. I lease the mine.

Q. You are not actively operating at the present time? A. No, sir.

Q. When did you cease active operations? A. In 1908.

Q. Prior to the year 1906, had you ever had any connection with coal mines? A. I was a mine foreman.

Q. Where were you a mine foreman? A. At this same mine.

Q. Prior to being a mine foreman, had you ever

had any practical experience in working in mines?

A. I was in among the miners.

Q. How many years of practical work as a miner did you have? A. Before that time?

Q. Yes, before you became a mine manager or foreman? A. About three years.

Q. After you became a mine foreman, did you do any work in the mines yourself? A. Yes, sir.

Q. You did work yourself? A. Yes.

Q. In the mines in which you worked as a miner or mine foreman, was any black blasting powder used? A. Yes, sir. 6248

Q. Have you had any experience personally in the use of black blasting powder? A. Yes.

Q. State how you have used it? A. I have used it in blasting coal. I have used it loose and used it in cartridges.

Q. In the work of blasting coal, state exactly what you have done personally in the use of the powder from the beginning of the operation to the end of it? A. I have done all there was, drilled the holes, placed the powder in the holes and fired it off.

Q. How do you place the powder in the holes, in what way? A. When you put it in loose, they have what you call a charger. 6249

Q. When you don't put it in loose, how do you put it in? A. In cartridges made with paper.

Q. State whether or not you have made cartridges of paper and charged them? A. Yes.

Q. What steps have you next taken? A. Used a fuse and lit the fuse after tamping the holes up with dirt or whatever material you would use.

Q. You used a fuse? A. Yes.

Q. After the fuse has been connected, what is the next step? A. Light it and get out of the road.

Q. Between the years 1903 and 1909, under what name did you operate? A. Howarth and Taylor.

Q. Did Mr. Howarth have any connection with the company between the year 1903 and 1908? A. No, sir.

Q. Who owned the mine? A. Myself.

Q. And who operated it? A. I did.

Q. You had no associate or partner in business? A. No, sir.

Q. Who made the purchases of supplies for your coal mining operations? A. I myself, and my wife; my wife sometimes ordered.

6251 Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder? A. Yes, sir.

Q. From whom did you purchase it? A. From the Buckeye Powder Company that Mr. Waddell is at the head of it.

Q. What was the name of the company, if you know? A. The Buckeye Powder Company.

Q. And where were the works of the Buckeye Powder Company? A. Nearly a mile from our place.

6252 Q. With the Buckeye powder that you purchased, did you make any trial of that powder? A. Yes.

Q. How many miners did you employ, approximately, in the year 1904? A. From 75 to 100, I don't know exactly, it varied.

Q. Why did you purchase Buckeye Powder for use in your mines? State any facts which led you to purchase Buckeye powder. A. The miners asked for it.

Q. The miners did? A. Yes.

Q. You stated that after the purchase of Buckeye powder, you made a trial of it in the mines? A. Yes.

Q. Will you state just how that trial was made?

Mr. Abbott: I would like to have the witness be specific as to the time.

Daniel Taylor—Direct

6253

Q. Will you state, Mr. Taylor, when this trial was made? A. I don't believe I can tell you the month, but I am pretty positive it was 1904.

Q. You say you are not able to tell the month? A. No.

Q. How long did the trial last? A. About three months.

Q. During that time, what other powders were used in the mine other than Buckeye powder, any at all? A. I think not.

Q. None? A. No.

6254

Q. For a period of approximately three months you exclusively used Buckeye powder? A. Yes, sir.

Q. I will ask you to state in detail, as fully as you can, what was done with the Buckeye powder in your mine, and what was the result of that trial, first stating what was done with the powder, to your knowledge? A. I was in at several different times, but I can't tell just the dates I was in the mine, but in several different times I saw it used, and then we sent it in just as we had other powder, every day, as it was ordered by the men, and they used it just as they did other powder. There wasn't any particular committee or anyone going there to watch the powder used, because we just sent it in as we had other powder, and used it all together, and then, at the end of this time the miners complained that they were not satisfied with the powder. I called their manager at the works, and told him that it was not giving satisfaction.

6255

Q. You told their manager that? A. Yes.

Q. Will you state, if you know, who the manager of the Buckeye Powder Company was? A. I believe his name was Justice.

Q. Justice? A. I think it was Justice; I am not positive of that name.

Q. In this trial, were there any records kept by you as to the tonnage produced from Buckeye powder? A. Yes, sir.

6236

Daniel Taylor—Direct

Q. You have stated that you had a conversation with Mr. Justice; where did this conversation take place? A. Over the 'phone from the mill to my house.

By Mr. Abbott:

Q. And furthermore, I would like to ask the witness who Mr. Justice was? A. I don't know; I just met him there as a foreman of the works, or manager, or some position of that kind.

6257 *By Mr. Katzenbach:*

Q. You don't know what position it was? A. No.

Q. Do you know his voice? A. No, but he said that was his name, and I invited him down to my house, and he stated he was the one; that is all I know about it.

Q. When did Mr. Justice—did he accept the invitation to come to your house? A. Yes.

Q. Who was present when he came? A. Mrs. Taylor and I.

6258

Q. Now, what did you say to Mr. Justice in that interview, and what did he say to you? (Objection overruled.) A. I said the men were becoming dissatisfied with the powder, and that it had reduced our output, and he made the statement that he thought the powder was all right, and that the men were just prejudiced against the powder, and I told him if he wished, we would produce the books and he could with us go over the accounts, and then to pick out any three months that we had used any other powder that he wished, and that we would compare it so as to satisfy him, and we did so.

Q. State fully what you did at that interview? A. We went over the bulletins for the time stated, and compared how much coal each man had loaded, with the amount of powder that he used, and we compared them with the other powder that had been used, with what we had found; the result was, that the men had been getting about—

By Mr. Abbott:

Q. Have you got those bulletins now? A. No, sir,

Q. Have you got any of the data you used at that time? A. No, sir, I think we burned it up. We tried to find it.

Q. You are testifying wholly according to your memory? A. Yes, sir; I think the records were burned up, because I leased the mine in 1908, and all those things, I think, were destroyed.

By Mr. Katzenbach:

6260

Q. State what the records show? A. The records show, that the men with other powder had been getting from 21 to 22 tons per keg, and the Buckeye they had averaged from 13 to 14 tons per keg.

Q. What did Mr. Justice say, if anything, regarding this? A. I don't believe I can give what he said; he was very much surprised, but what expressions he used, I can't give; but he seemed very much surprised, because he didn't think it could show out that way; but it was done to his own satisfaction.

6261

Q. After this trial of Buckeye powder in your mines, what kind of powder did you keep on hand for the use of your miners? A. Hazard and du Pont.

Q. What powder had you been using prior to this trial of Buckeye powder? A. Laffin and Rand, du Pont and Hazard.

Q. After the trial of which the results you have given, did you or did you not, continue to supply any miners with Buckeye powder who desired it? A. Yes, sir.

Q. They could have it if they wanted it? A. Yes.

Q. From whom did you purchase Buckeye powder? A. We just 'phoned up to the mill, and whoever took the order, sent it up.

6262

Daniel Taylor—Direct

Q. Mr. Taylor, between January, 1905, and January 1st, 1908, which I think was the time you discontinued business was it not? A. In September, 1908.

Q. In September? A. Yes.

Q. Did you purchase powder from any other company or companies than the Buckeye Powder Company? A. Between what time?

6263

Q. Between January, 1905, and September, 1908, other than the Buckeye Powder Company? A. The du Pont.

Q. Any purchases from the Buckeye Powder Company, will you state whether or not the Buckeye Powder Company delivered the powder to your mines? A. Yes, sir.

Q. Will you state, in purchasing du Pont powder, whether or not the du Pont powder was delivered to your mine? A. Yes, sir.

6264

Q. After the purchase of Buckeye powder, did you ever have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. I don't call to mind any.

A. No, sir.

Q. Do you know approximately how many kegs of Buckeye powder were used in your mines during the year 1906, by the miners? A. No, I don't.

Q. You don't know that? A. No.

Q. Do you know how many kegs of du Pont powder were used? A. No.

Q. You don't know how much of either? A. No, sir.

Q. How many kegs per year did you use in your mines at Edwards? A. Of du Pont?

Q. Of powder? A. When the mine was running every day, we used about 400 kegs every five or six weeks.

Q. 400? A. Yes, sir; it varied; it depended upon

how the work in that mine was; what we did for the full year, I can't tell you.

Q. How far is Edwards from Peoria? A. Thirteen miles.

Q. That is Edwards' Station? A. Yes, sir.

Q. Have you any telephone connection between your residence and Peoria? A. Yes, sir.

Q. You are connected with Peoria? A. Yes, sir.

Q. Will you state whether or not, to your own knowledge, that wire could be used during Monday, Tuesday, Wednesday or Thursday of this week? A. No, I think not; I know my 'phone was out of order, and the Central, I believe, was out. 6266

Cross-examination by Mr. Abbott:

Q. Mr. Taylor, referring to the last question of the series of questions which were asked, first, I would like to inquire whether or not anyone, within the past few weeks, has presented to you any written paper for your information containing a similar question to that proposed to you by counsel? A. Yes.

Q. Who? A. Mr. Moffatt came out with a paper with four questions for me to answer. 6267

Q. You examined the paper? A. Yes, sir.

Q. And signed the paper? A. Yes, sir, I answered the questions.

Q. And you gave the paper back to him? A. Yes, sir.

Q. And haven't seen it since? A. No, sir.

Q. Now, in your answer to that statement, do you wish it understood that you know all of the persons and associations and corporations whose names were read to you there? A. Individually?

Q. Yes. A. No, sir.

Q. Do you wish it understood that you know all the persons who might be representatives or agents of those persons and associations whose names were

read to you? A. To answer that, I might state I have never met any of those except those that came from the du Ponts.

Q. Who are they? A. Mr. Dooley, and I met Mr. Moffatt and Mr. Donnelly.

Q. Is that all you have met, whom you have known to be agents or representatives— A. And Mr. Off.

Q. Anyone else? A. Well, the Peoria Fuel Company—I bought the Laffin and Rand from at one time.

Q. Anyone else? A. I have never met Mr. Rice, of Chicago; I only know him by letter; I think that's about all that I can bring to mind.

Q. Were you, at any time, under contract with any person, association or corporation to purchase powder? A. Yes, sir.

Q. With whom was that contract made? A. I made a contract with Mr. Rice.

Q. Who is Mr. Rice? A. The agent in Chicago of the du Pont Powder Company.

Q. When was that contract made? A. Well, I made several with him; I can't give the dates; I believe I have one in my pocket that will give you one date at least.

Q. Did you have any contract at any time with the du Pont Powder Company, or anyone representing it, previous to this date? A. Yes, but that is about the only one I could find.

Q. And did you have any contract with the parties mentioned in this agreement, since the date of this contract? A. No; they changed it over to Dooley Brothers.

Q. After this contract was made with Dooley Brothers? A. Yes.

Q. I observe that this contract is dated November 1st, 1904, and there is annexed to it an amendment dated February 20, 1905; state how that am-

signment came to be made assigning this contract back to the du Pont Powder Company, and they releasing and discharging you from the obligations thereof; what was the purpose of that assignment? A. I don't know just whether I can give it correctly or not; but we had a powder house there that would hold 400 kegs, and they wished us to purchase the powder in 800 kegs, and I didn't have room for it, and I told them I couldn't take 800 keg lots; and I don't know whether that is in connection with that or not; but we had a few letters back and forth with reference to that.

6272

Q. Isn't it a fact, that after you assigned this contract, you began to deal with Dooley Brothers? A. Yes, sir.

Q. And they would furnish you powder in smaller quantities, 400 at a time? A. At a stated price, but there was a difference in the price.

Q. Have you that contract? A. Yes, sir.

Q. Produce it. A. (Witness produces contract.)

Q. Have you any other contract with the Dooley Brothers, prior to the date of the one you have just handed me? The date of this contract of Dooley Brothers, appears to be November 25, 1907; do you understand the question? A. Yes, whether there was an earlier contract than that?

6273

Q. Yes. A. I was just trying to bring it to mind; I don't just remember. It might be possible to find one, if there was any, but I don't remember whether there was or not.

Mr. Abbott: I offer in evidence the two papers.

Said papers are marked "Exhibits P-36 and P-37."

Q. Did you ever buy any powder of the du Pont Powder Company at any time when you were not

#6274

Daniel Taylor—Cross

under contract with the du Pont Powder Company?

A. Yes, sir.

Q. Do you know what you paid for powder you purchased at that time? A. \$1.35.

Q. When was it that you bought powder of the du Pont Powder Company when you were not under contract? A. I really can't give you the dates.

Q. Can you approximate the date? A. It was between the time that I used the Laffin and Rand, and when the men called for du Pont; but I can't give the dates, but it was earlier than any one of these contracts, before the Buckeye Company commenced.

Q. It was before these? A. Yes.

Q. Did you buy any powder of the du Pont Company not under contract, from 1903 to 1908? I will say for your information, that as you say you didn't buy any du Pont powder previous to when the Buckeye Company began business, that it began business in 1903. A. I bought du Pont powder before that.

Q. But none after that, when you were not under contract? A. No.

Q. That is right? A. Yes.

Q. In other words, as I now understand you, you were under contract with the du Pont Company all the time from 1903 to 1908, and that you bought powder of the du Pont Company during that time, in pursuance of your contract or contracts? A. Yes, there was a time that I bought a few loads without the contract, from a party in Peoria.

Q. Can you state when that was? A. I am not so positive, unless I got the records, but I believe it was between 1903 and 1905, sometime in between that time.

Q. Now, I will ask you if you have any recollection of having purchased powder of the du Pont

#6276

Powder Company sometime during the early part of 1905, and from that time until about the latter part of 1906, when you didn't buy from them under contract? A. (Witness examines contract.) I don't remember buying, except under contract.

Q. Do you know whether you got any rebate or special prices other than set forth in this contract?

A. \$1.00 is the lowest price I ever got from the du Pont Company, and that is in one of those receipts, and I never got any rebates to bring it lower. I find I have just one receipt.

6278

Q. You stated you had about 75 to 100 miners in your mine? A. Yes, sir.

Q. You also stated that you used about four or five hundred kegs every five or six weeks? A. About 400 kegs.

Q. How many kegs of powder would one miner use; how long would it take a miner to use a keg of powder? A. A great deal depends on the miner.

Q. Take your average miner. A. Two to three days; some of them will last a little longer, but I have seen some of them use one keg in a day.

6279

Q. I observe from our records, which I assume will correspond with your bills very nearly, that you bought powder from July 1st, 1904, to the total number of 220 kegs Buckeye powder; on July 29th, you bought 300 kegs Buckeye powder. I observe, looking over a longer period, that in February, 1907, you bought 280 kegs, and in March, you bought 115 kegs, and in April, you bought 125 kegs. Now, I will ask you to state how it happened, that so large a proportion of powder that you purchased and used in your operations, was Buckeye powder? A. That is 1907, is it not?

Q. The first inquiry I made related to 1904; the latter inquiry, to 1907. A. I suppose the time when we were using the most, in 1904, was when we were using it altogether.

Q. How about the latter part? A. We were using it altogether.

Q. In both times? A. If a man wanted du Pont, we would give him du Pont, and if he wanted Buckeye, we would give him Buckeye.

Q. Then, isn't it a fact, that a very large part of your miners were demanding Buckeye powder? A. That was when we started to make the test.

Q. When was this test? A. Sometime in 1904.

6281

Q. Our records show you made a purchase in March, two purchases in July, September, October and December, 1904. Now, I would like to have you state definitely when this trial you speak of occurred. At any rate, it was in 1904? A. Yes.

6282

Q. Our records show that you made purchases in 1905; during almost every month of 1906; during almost every month of 1907. I will ask you to state why it was, that after you made this trial which you have testified to in 1904, and had this conversation with Mr. Justice regarding the matter, you continued constantly to make large purchases of Buckeye powder? A. After the test, there were some few that desired the Buckeye powder, but the majority wanted the other. A committee came to me and asked me to make the change from Buckeye to du Pont.

Q. You said a committee came to you; what was that committee? A. The Mine Committee.

Q. What is it technically known as? A. The Mine Committee.

Q. Is it sometimes known as the Pit Committee? A. It's the same thing.

Q. What power or authority does that committee have, so far as the body of miners are concerned? A. They have the voice of the miners.

Q. A demand from the Pit Committee would be a demand from the miners as a body? A. Yes, sir.

Q. Such a demand must be observed by the operators under the agreement which exists between the operators and the miners? A. Not necessarily.

Q. Why, not necessarily? A. They have a means of carrying forward any disagreement between the Mine Committee and the foreman of the mine, to higher authority in the organization of the miners.

Q. But coal operators, as a rule, do observe the request of the Pit Committee, do they not, rather than enter in a dispute with them? A. No, sir.

Q. They do not? A. No.

6284

Q. Is that the rule? A. No, sir; it wasn't in my place.

Q. Insofar as the powder is concerned, isn't that the rule? A. I will give you just what I did; that's all I can give you.

Q. I want to get at the rule, then you can explain it. Under the contract which exists between the operators and the miners, the miners have a right to name the kind of powder they desire? A. Yes.

Q. Through the Mine Committee? A. Yes.

Q. Was it not customary that when that request is made from the miners, the operators observe it and try to conform to the request or demand of the miners?

6285

By Mr. Katzenbach:

Q. Are these rules you have spoken of, reduced to a written agreement? A. Yes, sir.

Q. Do you know the custom generally prevailing among the operators, or only what you yourself did? A. Only what I did.

A. My reference is all back to 1908; I don't know what they are doing now, but what we did at that time.

Q. This agreement that you speak of, that exists between the Coal Operators and the Miners, is not

an agreement which was executed individually by the Coal Operators? A. No, sir.

Q. It is an agreement made by the Coal Operators' Association as a body, through their chosen officers? A. Yes, sir.

Q. And the United Mine Workers, through its chosen officers? A. Yes, sir.

Q. You were a member of the Coal Operators' Association of the State of Illinois? A. Yes, sir.

Q. And you operated under that agreement? A. Yes, sir.

Q. Now, do you recall that sometime during the early part of 1905, a special price was made you and to other operators, if you know, making a very considerable cut in the price that had theretofore prevailed for du Pont powder? A. Yes, sir.

Q. There was a cut? A. When I bought not under contract I never got any reduction that way.

Q. You didn't get any reduction from the price which you paid? A. I had to pay more than I did under contract; that's what I mean.

Q. My question related to a special price that was made to you about the time which I have stated? A. You will find in the contract it has reference to certain articles being at a certain price, and then, if that was reduced, we were to have our rebate.

Q. I was asking you about the purchases you made, not under contract? A. I never got any rebate when I purchased not under contract.

Q. Can you say just what you paid for du Pont powder when not under contract? A. \$1.35.

Q. I thought I understood it was previous to 1903 when you paid the \$1.35 rate? A. In between 1903 and 1905.

Q. Did you pay \$1.35 for du Pont from 1903 to 1905? A. I am not positive, but I believe that is what I paid.

Q. But you stated you were always under contract with the du Pont Company, except a short period? A. Yes, sir.

Q. You stated you bought some powder of the du Pont Company from 1903 to 1905, when you were not under contract? A. I say, I think I did; I think I bought a load or two; I don't know the amount nor the date.

Q. Do you mean a wagonload or a carload? A. A wagonload.

Q. How many would there be in that? A. About 50 to 100.

6290

Q. I don't want to misquote you, Mr. Taylor, because I think you are trying to tell the straight truth; my recollection of your testimony was, that a while ago you stated that the only du Pont powder you bought, when not under contract, was before the Buckeye Company went out of business? A. No, I didn't make that statement.

Q. And it was—— A. I believe the statement I made was, I used Laffin and Rand before.

Q. But you didn't use any du Pont before 1903? A. Yes, we used du Pont——

6291

Q. Did you buy that under contract? A. I am sure we did, but I can't bring it to mind.

Q. You were under contract with the du Pont Company before 1903? A. Yes, sir.

Q. Now, you stated that during the period of this trial you had with the Buckeye powder, covering nearly three months, that you bought no other powder but Buckeye powder, on your direct examination? A. I am very sure that I didn't; I don't remember buying any during that time; I probably had in the powder house, powder at that time, but I don't think I bought any; I am not positive of that, but we used that altogether.

Q. Now, have you any other bills or books of

6292

Daniel Taylor—Redirect

reference that would refresh your recollection regarding any purchase made of either Buckeye or du Pont powder, except those presented here today? A. I think not. After I leased the mine, I burned up a whole lot, and I went away for a while, and I think we found about all we could.

6293

Q. I observe that the contract which you executed with the Dooley Brothers, dated November 25th, 1907, is signed by Edward A. Moffatt, on behalf of Dooley Brothers. Is that the Mr. Moffatt who is in the room at the present time? A. Yes, sir.

Q. And he is the Mr. Moffatt to whom you referred a while ago in your testimony? A. Yes, sir.

Q. Can you recall at this time who the members of the Mine Committee were that made this demand upon you at this time? A. I can't recall; one I know who it is.

Q. Who was the one? A. Thomas Fahey.

Q. The others you don't know? A. No, but he could find out.

6294

Q. Where is Mr. Fahey now? A. At Edwards.

Re-direct examination by Mr. Katzenbach:

Q. Mr. Taylor, who was it that asked you to make this trial of Buckeye powder? A. The miners.

Q. After the trial had been had, as you have testified, who was it that asked for du Pont powder? A. The miners.

Q. After the miners asked for du Pont powder, state whether or not it was impossible for a miner who desired to use Buckeye powder, to secure Buckeye powder from you? A. No, sir; I kept it all the time, whenever they called for it.

Re-cross examination by Mr. Abbott:

Q. Isn't it a fact, that after you made this trial, that a very considerable number of your miners called for Buckeye powder? A. No, sir, the Miners' Committee came to me and demanded the du Pont.

Q. I am asking you if a very considerable portion did not continue to demand Buckeye powder? A. Some did, yes.

Q. If they didn't, why did you keep buying so much Buckeye powder? A. I think if you would compare the two, you would not think it was what you stated.

6296

Q. That being so, you have evidently refreshed your memory since the last time I inquired about it, because I wanted you to tell me just how much powder you used per month, and what proportion was Buckeye and what was du Pont. You were unable to do that a while ago? A. I thought these receipts would give us that during that time.

Q. I asked you whether you had not made certain considerable purchases of Buckeye powder at certain times? A. I can give you very well the amount of each one, if that would answer the question, from the receipts.

6297

Q. But you are now testifying according to the fact, as you have recalled it, and I would like to have you continue your statement which counsel drew out. My point is, Mr. Taylor, that our records show that you made very large purchases of Buckeye powder constantly after this trial, and from your own statement that the men could use only a certain quantity of powder per day, the conclusion is irresistible that a large portion of them used the powder, unless you must have stored it in your warehouse and didn't use it, at all? A. Imme-

6298

Daniel Taylor—Recross

diately after the test, there wasn't so much used for a considerable time, and then they asked for it again?

6299

Q. Why? A. They claimed they had gotten the powder in better shape, the company did, and I suppose those who used it occasionally got better results; I don't know that; I am making a supposition; but before the last, we were using considerable of it, but there was no time, I think, between the trial and the time I gave up, but what some was used, but immediately after the test, I think there isn't a very large quantity.

Q. Will you state again that fact, a very important matter, just when this test or trial occurred? A. I cannot tell you the month, but between the time.

Q. State again, please. A. Between 1903 and 1905, sometime in 1904, I think.

Q. Was it in the spring or fall? A. It would be late in the winter, I think, or getting towards spring.

6300

Q. Was there any record made of it by any committee or yourself, as to when that test was made? A. Yes, we went over the full time; we made the trial; we went over the bulletins, the amount of coal they loaded, the amount of powder used, and figured it all up, and compared how much it was per keg, and then went over the other powder we had been using for the same length of time, and compared the two.

Q. Was this an official test under the rules and regulations which existed between the coal operators and the miners, or was it merely a trial which you inaugurated or instituted for your own benefit or information? A. As I said in the first place, it was a demand from the miners. They took the test.

Q. They took the test? A. Yes, they demanded a test.

Q. That they should have a test? A. That they should have that powder.

Q. They demanded that they should have the powder. This is an official test. For your information, I will state that this agreement between the operators and miners provides a formal way in which an official test shall be got at. As I understand you now, this change from Buckeye to du Pont powder was in answer to a demand made by the miners? A. Yes, sir, and also from that to the du Pont was from the miners.

6302

Q. I don't understand your last answer. A. I mean from the Buckeye to the du Pont, after this length of time they said, "We ain't getting the amount of coal we ought to per keg, and we want to go back to the du Pont."

Q. Was there ever any demand made by the miners after that for a change from du Pont back to Buckeye? A. No, not a demand; there would be individuals, but not a demand from the committee or the men as a whole, and we always provided it whenever there was a call for it.

6303

Q. And that call for a time was comparatively small, but later on it increased? A. Yes, sir.

Q. That is right? A. Yes.

Q. And do you remember when this particular increase you have in mind occurred? A. No, I couldn't tell you.

Q. In other words, after they had ceased to use Buckeye powder for some time, and continued to use du Pont powder, they found they had made a mistake, and they wanted to go back to Buckeye; wouldn't that be the natural conclusion from your statement? A. Not a mistake; if you want to use that word—

Q. In other words, there was a considerable difference of opinion among the miners about the merits of the powder? A. Not at that time.

6301

Samuel P. Winters—Direct

Q. Immediately after you had your test, or before, which? A. They nearly all wanted to change at that time; there would be a few that didn't.

Deposition of SAMUEL P. WINTERS, a witness produced on behalf of the defendants, being duly sworn, read as follows:

6305 *Direct examination by Mr. Katzenbach:*

Q. Mr. Winters, where do you live? A. I live in Peoria, the South end.

Q. What business are you engaged in? A. The mining business.

Q. What is the name of your company? A. The Winters Coal Company.

Q. Is it an incorporated company? A. Yes, sir.

Q. It is incorporated? A. Yes.

6306 Q. What office do you hold? A. Manager and salesman and treasurer, and all the whole thing; I run it myself.

Q. You own the company, do you? A. Yes.

Q. How long have you been engaged in the mining business? A. All my life, about 30 years or better.

Q. About what age did you commence to work in the business? A. About 16, or along there.

Q. What have you done in the mines? A. Dug coal, until I ran a mine for myself; I have acted as manager in mining coal, and all around.

Q. In the digging of coal, have you, as a miner, used black blasting powder? A. Yes.

Q. State what use you have put it to. A. Used it for blasting out coal and shooting rock—

Q. In blasting out coal, will you state fully what is the operation with reference to the use of black

blasting powder, how you do it? A. You drill in holes, fill in the amount of powder you judge would blow it out, and light it and let her go.

Q. How do you put the powder in, in what way?

A. You generally put it in in paper cartridges.

Q. How many years of your life have you spent in blowing out coal and shooting coal? A. Well, let's see, possibly—let's see, between 19 and 20 years.

Q. Where are the mines of the Winters' Coal Company located? A. About four miles South of the Court House.

6308

Q. The Court House in Peoria? A. Yes, sir, straight out on Adams Street.

Q. Near any village? A. Yes.

Q. What? A. Bartonville.

Q. At Bartonville? A. Near Bartonville.

Q. How long have you been operating and working in that mine at Bartonville? A. I have been there since 1885.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for the Winters Coal Company? A. I did.

6309

Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder? A. I did.

Q. Of whom did you purchase it? A. The Buckeye Powder Company.

Q. What powder had you been using prior to the purchase of Buckeye powder? A. I used various powders, but principally the du Pont.

Q. Do you recall about the time you made any purchase of Buckeye powder of the Buckeye Powder Company? A. Yes.

Q. You do? A. I do, very close.

Q. What time was it? A. About 1905 or 1906, along there, I think.

6310

Samuel P. Winters—Direct

Q. How many kegs did you purchase? A. I think it was 640 some odd kegs, or somewhere in there.

Q. After you made these purchases of Buckeye powder, state whether or not, to your knowledge, it was used in your mines? A. Yes, sir, it was used there, some of it was.

Q. Some of it was? A. Yes; some of it was returned.

6311

Q. State any fact that led you to purchase Buckeye powder? A. Because it was offered cheaper to me than du Pont at that time.

Q. How much cheaper? A. I think I was paying \$1.10 for du Pont, and I think the Buckeye was offered to me for \$1.00 by a fellow named Pepperd, and Jones, afterwards.

Q. Now, Mr. Winters, will you state whether or not you yourself ever used any Buckeye powder in the mines of the Winters Coal Company? A. I used it just to try it; I didn't mine coal at the time; I used it to try it, to see if the miners were right in their idea of the powder.

6312

Q. You tried it yourself? A. Yes, sir.

Q. State why you tried it out personally. A. Well, I had some of the Buckeye powder, and the first seemed to give about the same satisfaction as the du Pont, and I thought—I forget—I got 100 kegs or something like that for a trial, and it worked fairly well; it worked practically the same as the du Pont, and I ordered more, because it was cheaper, and I tried the other, and we used some of that, and they kept complaining and said the powder wasn't up to what it ought to be, and then for several days the coal didn't come out as it ought to, and I needed the coal, and it was in the winter time, and I asked some of the good miners what was the matter—

Q. Just state what you did. A. They sent for me to go down and experiment myself with it. I went down and they had some holes drilled. I know what that ought to take, because I went down and worked myself, sometimes, and it didn't work—

Q. State what you did with these holes that were drilled. A. They didn't work, and I went to work, and after the shots went off, watched them, and I gave them more powder—

Q. State what you did with these holes. A. I tamped them up myself. 6314

Q. Was that— A. Buckeye powder.

Q. What then? A. I lit the shot and let them go.

Q. Then, did you return afterwards? A. Yes, sir.

Q. What did you see? A. No coal loose.

Q. Then, what did you do? A. I went to work and cleaned the holes out and filled them up with du Pont powder and fired them over; then I went to several other places and tried it, with the same results.

Q. You tried it in several places? A. Yes, sir. 6315

Q. And got the same results? A. Yes, sir.

Q. And what was the results you got? A. Bad; it wasn't up to what it ought to have been.

Q. Mr. Winters, we will go back now, and will you state just what you did to try out Buckeye powder, stating exactly what you first did with Buckeye powder with your own hands? A. I just repeated what I done.

Q. Just repeat it again. A. That there was not a sufficient amount of coal coming out, and I didn't understand why it didn't; the men claimed the powder wasn't what it ought to have been.

Q. State what you yourself did when you went down in the mines, with the use of Buckeye powder. A. I went and used it just as I explained.

6316

Samuel P. Winters—Direct

Q. Will you please explain? A. They had these holes drilled, and I filled them with powder and I lit the two shots and came away, in one room; then I went in two or three other rooms and tried the same thing.

Q. After you lit the shots did you make any examination to see what the results of the shots were?

A. I certainly did; I went back in this one room and reamed the hole out—

6317

Q. What did you see with reference to the coal, where you had used this Buckeye powder; what did you see with your own eyes? A. It didn't work.

Q. How didn't it work? A. It was weak; it didn't blow any coal loose.

Q. After you had used the Buckeye powder in these holes that you have referred to, did you subsequently use in the same holes, any other powder?

A. Yes sir, I did.

6318

Q. State what powder you used and how you used it, and what results you got. A. I went and filled it up with du Pont powder, these same holes, and lit the shots over again, and I blew the coal out, and I had good shots, because I had used it so many years, and I know just about how much those holes ought to take.

Q. Now, what quantity of Buckeye powder had you used in those same holes, as compared with the quantity of du Pont powder? A. Well, the holes, probably, were about seven feet, and I filled them about half full the first time, of the Buckeye powder; the results were bad, and I filled them half full the second time with du Pont powder, and I blew the coal out.

Q. You blew it out? A. Yes; it was weak.

Q. What was weak? A. The Buckeye.

Q. Did you try the powder in any other places in the mines? A. In two or three other rooms.

Q. State what you saw from the trials you made in the other places. A. The result was the same.

Q. After you had tried out this Buckeye powder, what did you do? A. Went around the mine to see how the shots worked; I am mine manager; and I seen these failures all around; that's where the miners kicked on the powder.

Q. After this, did you or did you not, use all of the Buckeye powder which you had bought? A. I did not.

Q. What did you do with the balance of it? A. 6320
Sent it back to the factory.

Q. What factory? A. The Buckeye Powder Company.

Q. Did you ever subsequently use any more Buckeye powder? A. After that, yes, 50 kegs.

Q. How did you happen to get the 50 kegs? A. Well, I'll explain, if you'll let me. The Buckeye powder we had there, we had got a bunch of it there; I sent back 315 kegs, and how much more previous to this time, I don't know; the du Pont people come there and wanted to know if I would allow them to put powder in the other half to compare, and I said I didn't care, and they all ordered du Pont powder, and the Buckeye Powder Company sent me a bill. 6321

By Mr. Abbott:

Q. Did you write? A. No; I telephoned to the folks up here on Main Street.

Q. Are you sure you did? A. Yes.

Q. Who notified them? A. I called them up and told them I couldn't use this powder, and we had it out several times over the 'phone.

Q. You didn't write about it? A. I don't remember writing; the 'phone was much quicker work. I told them to take this powder back, and it laid there for quite a while, and they insisted upon my

6322

Samuel P. Winters—Direct

paying for the powder, and I wouldn't do it; so finally, I hauled it back to the factory. They said they could make a better powder, and I said, "I am willing to try it," and they sent me 50 kegs more.

Q. You ordered this over the 'phone? A. I think so, or whether it was from the agent.

By Mr. Katzenbach:

6323

Q. State what— A. I tried this powder and it didn't work; it worked a little bit better than the other, so I thought it was no use fooling around with an inferior grade of powder, so I mailed the, a check for this 50 kegs, and that's the last dealings I had with the Buckeye Powder Company.

6324

Q. After you purchased Buckeye powder, as you have testified to, did you have any conversation with any agent or representative of the du Pont Powder Company with reference to Buckeye powder? A. No, I can't say I did; I might possibly have mentioned a word or two or something; I don't think I did; I can't remember. I ordered this du Pont powder ever since.

Q. Did any agent of the du Pont Powder Company talk to you about du Pont powder? A. I can't recall that they did, or condemned it in any way, or anything of that kind.

Q. Mr. Winters, in a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company, in answer to a demand for the names of customers that were induced by these defendants which I have mentioned, and by certain other persons and corporations whose

names I will give you, have stated that the Winters Coal Company was a customer of the Buckeye Powder Company which these defendants and the other persons and corporations induced to abandon or stop the purchase of powder from the Buckeye Powder Company. Now, these persons that are mentioned in this suit are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Irene du Pont, Henry F. du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, and the corporations are: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company, of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laffin & Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company. I now ask you to state whether or not any of the persons or corporations which I have named to you in this question, or any agent or representative of those persons, have induced you to cease the purchase of powder of the Buckeye Powder Company, or ever did? (Objection overruled, exception allowed.)

6326

6327

A. No, they did not.

Cross-examination by Mr. Abbott:

Q. Now, Mr. Winters, in regard to the last question which was just propounded to you, do you know all the persons, associations and corporations whose names were read to you personally? A. I do not.

Q. Did you catch all of them as they were read over? A. I know the brand of powder, that is all.

Q. What is that? A. Du Pont, Laflin and Rand, Hazard. I know that; I used the du Pont; I don't know any of the people.

Q. The rest of them you don't remember? A. I don't know anything about it.

6329

Q. What agents of any of the persons—or what agents or representatives—whose names have just been read to you, do you recall you have ever met for any purpose? A. I used Laflin and Rand; I got that of a man by the name of Barnewolt, and I also used Hazard powder, and I bought that off Oakford and Fahnestock wholesale house down here; and finally, it seemed that the Hazard powder, or du Pont, took the place of the Hazard in some way, and instead of getting the Hazard, I got the du Pont powder.

Q. Whom did you get it of? A. The du Pont.

6330

Q. Yes. A. If I am not mistaken, I first, I think, but I ain't sure, but I think, of the Oakford and Fahnestock people, and we substituted the du Pont powder, and it seems to me I got in that way.

Q. Any other persons? A. The du Pont powder?

Q. Yes. A. The Dooleys are agents now for this powder.

Q. Anybody else? A. I believe I got some off C. J. Off at one time.

Q. Anybody else? A. I think I got some off Off; I am not really positive, but I think so, that's all.

Q. Those persons whom you have named are the only agents or representatives of any of the persons or representatives of the corporations whose names have been read to you by counsel which you had in mind when you answered that question? A. Well, before I answered this question I understood him to say, was I induced by any of the agents of the du Pont Powder Company to buy this du Pont

powder when I was a customer of the Buckeye people, and I said "No"; I just drifted in this business, and I got some off Off and Oakford and Fahnestock, and finally these people drifted in and handled the du Pont, and I bought off them.

Q. None of those persons whose names you have given as agents or representatives ever asked you to abandon Buckeye powder? A. I say no.

Q. Now, you gave testimony, did you not— A. I want to say they come to sell their powder, but they never asked me to abandon any powder.

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Q. You were under contract with the du Pont Powder Company, were you not, to buy du Pont powder? A. I have lately,—I signed a contract, I think, the last two or three years.

Q. Were you ever before under contract with them? A. I don't think so; it has been, probably, three or four years, and they said if I would be a steady customer, they would make me a wholesale price, the same as larger mines.

Q. How much powder do you use per year in your mine? A. I don't know; probably 2500 kegs, or something like that; I would have to figure that up; I used—

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Q. How many kegs did you use at any time during the years 1903 to 1909? A. I couldn't answer that I would have to look over my books.

Q. Can you approximate it? A. Possibly a couple of thousand kegs; I wouldn't give that as a definite answer.

Q. Isn't it a fact, that you were under contract with the du Pont Powder Company to buy powder of them, previous to the time you have stated? A. Previous to the time—

Q. That you have now stated in your answer you have just given? A. I can't exactly give that; I had various contracts from year to year.

6334

Samuel P. Winters—Cross

Q. You have? A. Yes.

Q. Have you not been under contract with the du Pont Company, or one of its agencies, to buy du Pont Powder all the time? Were you not under contract all the time from 1903 to 1909? A. No, no, I don't think so.

Q. What years were you not under contract? A. I can't exactly say; I was free to buy in 1903, '04, '05 and '06, or I would not have bought the Buck-eye.

6335

Q. Isn't it a fact that you had a contract with the du Pont Powder Company, and that they supplied you Hazard powder through Oakford and Fahnestock; that that contract was dated August 1, 1903, and ran for five years? A. Ran from 1903 for five years?

Q. Yes, it ran for five years. A. For three years.

Q. With whom? A. I have for three years back from now.

6336

Q. (Stenographer repeats the question as follows): Isn't it a fact that you had a contract with the du Pont Powder Company, and that they supplied you Hazard powder through Oakford and Fahnestock; that that contract was dated August 1, 1903, and ran for five years? A. I don't think so.

Q. Will you say it is not a fact? A. I don't know; it is not a fact.

Q. You don't know it is not a fact? A. I don't think it is. I will explain the matter. Now, then, I was furnishing coal, Oakford and Fahnestock, and we just continued doing business from one year to another; sometimes the powder would probably be up or down 5 cents a keg, and I think the price then was about \$1.35, and I kept furnishing coal, and there was no contract made; there was an agreement made some years ago when I first started in, and continued right along.

Q. Isn't it a fact, that as early as April 9, 1901, you made a contract with the Hazard Powder Company for a period of three years from that date to furnish you with Hazard powder? A. No, I don't think I had any contract, I don't think so.

Q. You used Hazard? A. Yes.

Q. Hazard? A. I can't recall such a contract.

Q. You testified, did you not, in the case of the United States of America, Petitioner, against E. I. du Pont de Nemours and Company, and others, defendants, an action brought in the United States Circuit Court for the District of Delaware; do you remember the cause or action I have stated to you? A. Yes, in Chicago.

6338

Q. And it was in that action that you were a witness? A. Yes, sir.

Q. Have you got any records or any data from which you have refreshed your memory to give your testimony here to-day, or any portion of your testimony? A. Have I got any records?

Q. Yes; or books or papers? A. No records whatever.

6339

Q. Then, what you have testified here to-day, you have depended entirely upon your memory? A. I recall it very distinctly, yes, when I come to refresh my memory.

Q. Have you recently read or looked over the testimony in the other case which I— A. Yes, to-day; I wanted to see if I wouldn't get my dates mixed, but I remember them very distinctly now.

Q. Did you read over your testimony that you gave? A. Not particularly; I had my bookkeeper to go over the accounts and look things over.

Q. Have you got books and accounts relating to this matter? A. No; but I had an idea that I might refresh my memory about the dates.

Q. I hold in my hand a small green book; have

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Samuel P. Winters—Cross

you ever seen a book like this? A. I have seen a great many books in my time, but I don't know—

Q. Have you, in the last day or two, seen a book similar to this? A. No; I never looked inside of a book like that.

Q. Have you looked over your former testimony which you say you gave in the case at Chicago, since you gave it? A. I tell you I refreshed my memory on that to-day.

6341 Q. Where did you get that testimony from? A. I refreshed it by looking over my accounts to see what transactions took place.

Q. Have you got a copy? A. No.

Q. How can you refresh your recollection by looking over your testimony given several years ago, unless you had that testimony in some form? A. I have not got any.

Q. You didn't refresh your memory by looking over the testimony? A. By my own books.

6342 Q. I asked you if you had any books that gave you this information, and you said "No?" A. I refreshed it when we got this powder.

Q. Have you got any books that give you any facts concerning which you have testified here to-day? A. No.

Q. Then, why do you persist in saying you looked over some books before you came here? A. I looked over the books I have in my office.

Q. Where are they? A. They are in my own books I keep for the mine.

Q. How far back do they run? A. Back to 1893.

Q. Then, you have got some books in your possession that you have examined to refresh your memory concerning what you testified here to, to-day? A. No, only my coal accounts and powder accounts, and the powder transactions I had with various powder companies.

Q. You have got those? A. Yes.

Q. And what did you look at those books for? A. To refresh my memory to be sure I would have the dates right. I had no copy of any proceedings, understand.

Q. Do I understand that you could not have told the story as you have told it to-day, unless you had refreshed your memory from those books? A. Yes, I could; I only wanted to get the dates straight.

Q. You could not have remembered the dates? A. Not so clearly; I looked over my check book and my coal accounts and the business I done at the mines, and I recall that to my memory, I recall the facts.

6344

Q. How did you get the information that you bought 640 kegs of Buckeye powder? A. I got an account of it in my books.

Q. You got it from your books? A. Yes; I wanted to be sure about the dates. .

Q. How did you get the number of kegs, then? A. I got a record of it.

Q. Then, you refreshed your memory as to the number of kegs, didn't you? A. Yes, sir.

6345

Q. Where did you get the information concerning any price you paid for powder you bought of the Buckeye Powder Company and the du Pont Powder Company? A. I looked over the books; I looked over the 1903, '06, '07 and '08, along in there, and they stated when I bought the powder, and the amount, and the date.

Q. Are you your own bookkeeper? A. No.

Q. Did you make the entries? A. No, my bookkeeper did.

Q. Give me the date that you purchased 100 kegs, as you stated of Buckeye powder, first? A. I can't recall the date.

Q. How many kegs definitely, did you buy at that time? A. I think I got an amount to try it first; I think so.

Q. I am asking you the number of kegs you got, as you have looked over your books? A. I said we got 640 kegs.

Q. Was that the first purchase? A. I can't recall; I think we had some on—

6347 Q. Didn't you say you bought 100 kegs or so of Buckeye powder, and that you tried that, and that you made another purchase later? A. I think there was a batch of powder got first; I can't state whether it was 50 or 100 or 200.

Q. Why can't you state that fact just as well as any other fact, after having examined your books?

A. The books show 640 kegs of powder.

Q. Then, didn't they show 100 kegs? A. They didn't show it.

6348 Q. You don't recall that 100 kegs? A. I think so; I think we had a trial, and afterwards we got some more I think so; I am not positive. I don't know whether they had come down or not I kind of think so.

Q. Isn't it a matter of fact now, that what you have testified to about the use of the Buckeye powder and the reason for your change, is altogether what you think, and not actually what occurred? A. It is just what occurred.

Q. You don't have to look on your books to find that out, do you. A. I should say not.

Q. What kind of a company was this that you were connected with; was it an incorporation? A. Yes, an incorporated company.

Q. Who were the other stockholders in that company? A. I don't know all of them now; I can't recall them.

Q. State who they are. A. I remember about

that time a man named Rickerts was a partner, and a man named Guppy, and William Doe, and I remember a man— A. I can't remember them all.

Q. What office did you hold in that company? A. President.

Q. Who was Vice-President? A. I can't recall now.

Q. Who was Treasurer? A. I was Treasurer.

Q. Who was Secretary? A. A man by the name of J. F. Noel.

Q. Who were the Board of Directors? A. At that time, I think this man Guppy was there, and Rickerts, and the man Doe, and a man named George Blank, and I think there were five.

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Q. Was this Blank, of the firm of Blank and— A. No, this was a coal miner.

Q. Do you know anything about the sized grain powder you bought of the Buckeye Powder Company? A. I do not.

Q. Do you know anything about what sized grain powder you bought of the du Pont Powder Company? A. I don't know.

6351

Q. What price did you pay for du Pont powder? A. When?

Q. At any time? A. I paid various prices for it; I paid at that time \$1.10, I think.

Q. There was a considerable dispute, was there not, between you and the Buckeye Powder Company, when it came to their endeavoring to collect their bill against you for this powder? A. Yes, they wanted me to keep the powder and use it.

Q. Was there any agreement between you and the Buckeye Powder Company at the time you bought it, or any portion of it? A. They guaranteed the powder to be good.

Q. Did they agree to take it back if it were not satisfactory? A. Yes.

Q. In writing? A. No, I think it was a verbal agreement.

Q. The agreement was not in writing? A. No.

Q. Whom did you make that agreement with?
A. I think with the agents. A man by the name of Pepperd came there, and a man by the name of Jones, and they said if the powder was not good I should return it.

Q. Which one was the agent?— A. Pepperd at first.

6353 Q. How many did you buy powder of? A. I can't recall.

Q. Why did you say "Pepperd at first"? A. He was the first agent.

Q. How much did you buy of Pepperd? A. I don't know.

Q. How much of Jones? A. I don't know.

Q. You don't know how much? A. No.

Q. How much did you buy of either one of them?
A. I can't tell.

6354 Q. How do you know they were the agents of the Buckeye Powder Company? A. They came there and sold it to me, and the powder was delivered.

Q. You stated that you bought 640 kegs of Buckeye powder? A. 640 some odd, possibly.

Q. Was that all in one batch? A. That was the total amount.

Q. How many different batches of powder did you buy? A. I can't recall, it has been—

Q. How is it you know so definitely you bought 640 kegs, and you don't know when you bought it, or in how many different batches? A. I had that entry on my book, the total amount, but I got no record of those amounts.

Q. Is it all entered on your book as one item? A. Yes; I am not positive if the 50 kegs that came was included in that or not.

Q. When did you buy the first batch of Buckeye powder? A. The first one?

Q. Yes. A. I think in 1905?

Q. What month? A. I don't recall.

Q. Don't your books show that? A. Yes, they would show it, I think; I only wanted to—

Q. You said you wanted to know the date you made these purchases; what do your books show?

A. My books just show I paid so much for powder in such a month, so many kegs of powder.

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Q. At what date does it show you made the payment? A. I could tell if I looked at my check book; I ain't got that.

Q. Then, what was the use of looking at your books, if you don't know? A. Just looked at 1906 when I got this powder.

Q. That's all you wanted to know? A. That's all.

Q. Did anybody tell you to look at your books to refresh your memory? A. No.

Q. You did it of your own accord? A. Yes, so as to be sure what I said here was true.

6357

Q. When did you first make this experiment, as you call it, with Buckeye powder? A. I think it was 1905, I think.

Q. What month? A. I don't recall.

Q. You don't know when it was? A. No.

Q. Was it at the time you bought the first batch of Buckeye powder; was it at that time you made the test? A. No; it was the last; I think there was a pretty large batch from the last time; I am pretty near positive, as I said before. This was two different deliveries—

Q. You said that before, and you said it was one batch. (Stenographer repeats the question.)

A. I couldn't use it.

Q. The powder you have bought before, then, you

6358

Samuel P. Winters—Cross

didn't test in any way? A. No, the first powder seemed to be fairly good.

Q. Now, you stated on your direct examination, something about the manner in which you undertook to make this test yourself? A. Yes, sir.

Q. And you told about how you went in there and found some holes bored? A. Yes.

Q. That's as I understood you? A. Yes.

Q. And you put some powder in there? A. Yes.

6359 Q. That hole was how long? A. About seven feet, or along there.

Q. And how much powder did you put in? A. I think I filled it about half-full.

Q. Three feet and a half? A. Three feet and a half.

Q. And then, after that, after it was fired, it didn't bring any results, and you filled up that same hole with du Pont powder? A. Yes.

Q. The same hole that you had filled with Buck-eye? A. Yes.

6360 Q. And you fired that and it brought good results? A. Yes.

Q. You told something about another shot you fired? A. In the same room, yes.

Q. And in the same way? A. Yes.

Q. And with the same results? A. Yes.

Q. And you put in the same amount of powder? A. Yes, and I said something about going in two or three other rooms; I wasn't skeptical about this powder; I wanted to give it a fair chance, and I took powder from another keg.

Q. I want to ask you about this matter first: in your testimony in the case to which I called your attention a while ago, that is *The United States of America, Petitioner, against E. I. du Pont de Nemours and Company, et als., Defendants*, I will ask you whether you recall what you said at that

time; do you recall what you said at that time? A. In Chicago?

Q. Yes, do you recall what you said? A. Oh, possibly a few words; I can't recall all of it; I can't remember those questions.

Q. I will ask you whether you didn't testify at that time, as follows; in answer to a question which was put to you by the attorney for the defendants in that action, which question was as follows: "Tell us what experiment you made with the Buckeye Powder Company yourself, and with the du Pont, to test it," and in answer to that you are reported as having said: "I knew what the du Pont was, because I had used it, and when the coal didn't come down as it ought to, I asked the miners what was the matter; they said the powder wouldn't work, and I says, 'It looks like strong powder; it looks good; it's cheaper than the other; what's the matter; can't you use it?' and they said, 'No, we can't use it;' I said, 'I would like to go down and try it myself and see;' so I went down and tried it, and there were two places that we tried it in, and that was not quite sufficient, so I tried it in another place, and fired a blast, and put in some powder, and it didn't do anything. The men said to me, 'You can't do it; you can't tell how much powder to put in.' I says, 'Why, how much would you put in that seven feet to tear it clean up?' He said, 'We did put in about 6 feet 6 inches, and after tamping, filled it up full;' I said, 'I never saw such a thing in my life; half-full ought to knock that.' They said, 'Well, go and try it, if you know more than we do, go and try it;' I said, 'I will, I will try it;' I filled it with the Buckeye powder as much as I thought would knock it, and it didn't do anything; so I went back and charged the hole over again, and filled it with the du Pont powder. Afterwards I went back inside of

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Samuel P. Winters—Cross

thirty minutes, and filled the same hole up again.

Q. The first shot was with the Buckeye? A. Yes, and it didn't do anything, and then I went to work and filled it the second time, after the gases was gone away from this first shot, but it didn't do anything; it made a little gas. Then we tamped it up for three or four minutes, and then we put the du Pont powder in, and then we fired that, and that was all right. So I just wrote Mr. Waddell that the powder was not good, that I was having some trouble with it. At first, they didn't want to take it back, but finally they did, and I returned 315 kegs." A. Everything is in there very straight, any more than I didn't fill the same hole with Buckeye powder. I only tried it once in the one hole.

6365

Q. You are sure of that? A. I tell you that is pretty close to it, to what I possibly said there; that's pretty close.

Q. Which do you want to have understood to-day: that the testimony you gave to-day is correct, or the testimony as you gave it in the suit to which I have called your attention? A. Just as you please about that. Those are straight facts there, but I don't recall charging the same hole over twice with Buckeye powder.

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Q. Do you know Mr. R. S. Waddell, the President of the Buckeye Powder Company? A. I think that is the gentleman there.

Q. You see him present in the room? A. I think that is the gentleman.

Q. Did you ever give any reason to him for desiring to return the powder which you say you returned to him? A. I think so.

Q. What was that reason? A. I thought it wasn't good; I couldn't use the powder, and the men—

Q. Did you ever give him any other reason? A. No, I had none.

Q. Did you ever tell him that the size of the powder wasn't satisfactory to you, the size of the grain?

A. I don't think I did, because I am not an expert on powder.

Q. Did you ever tell him you were under contract with the du Pont Powder Company and that you couldn't keep this powder without violating your contract, or words to that effect? A. I don't know that I did or not; I don't recall that we had a contract; I got the powder off them just the same.

Q. Did you ever give another reason for returning that powder that Mr. Pepperd, whom you say sold you that powder, had gone to some of your men and attempted to sell Buckeye powder to them direct, and you wouldn't do business with a firm that would do that, and wouldn't have their powder? A. No, I didn't like the idea of them going to the men when I was there to buy the powder; I think I said something about that. He went to each man individually.

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Q. You didn't like that, did you? A. I didn't care, in fact.

Q. You didn't like that; you had the powder on hand and you wanted to sell it yourself? A. I would rather he would come to me. I gave him permission to go down.

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Q. Didn't you make a complaint to Mr. Waddell that that was the cause of your refusing to pay for the powder—on that account? A. No, I wouldn't refuse to pay for anything, if it was all right.

Q. Didn't you give that as your reason to Mr. Waddell? A. I don't think so; I probably mentioned to him that the fellow took the wrong end of the business to sell powder, but outside of that, I think that was all.

Q. Have you any means of refreshing your recollection as to the date when you returned the 315

6370

James F. McElwee—Direct

kegs of powder you say you returned? A. I don't hardly think I have; it was a long while after it was bought.

Q. You haven't any means? A. I think not.

Q. Isn't it a fact, that after you refused to pay for that powder, and wanted Mr. Waddell to take it back because you didn't like the way this man was doing by going around to the men direct to sell the powder to the miners, that he threatened to sue you for that debt? A. I say no; it was rather the contrary; I would rather deal with Waddell than the other people.

Q. You didn't make any such statement as that to him? A. No, sir.

Q. You said, however, that you did have difficulty in getting him to take that back? A. Yes, sir.

Q. That much is true? A. It is.

Q. And how long a time after you began to try to get him to take it back was it before you got him to take it back? A. Quite a while, from one to three months.

Q. You know Mr. Waddell pretty well, don't you? A. Not very well.

Q. Didn't he tell you finally, that he would take the powder back simply because he didn't care to indulge in a lawsuit to recover the amount due him? A. He mentioned something to that effect.

Deposition of JAMES F. McELWEE, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. McElwee, where do you live? A. Peoria, Illinois.

Q. How long have you lived here? A. Since in 74.

Q. What business are you engaged in ? A. The coal mining business.

Q. Are you connected with any company engaged in that business? A. Yes, sir.

Q. What is the name of your company? A. At the present time?

Q. Yes. A. I am connected with three companies, the Wolschlag Co-operative Coal Company, the Maplewood Colliery Company and the Maplewood Coal Company.

Q. Between the years 1903 and 1909, did you have any connection with the Maplewood Coal Company, which you have named? A. Yes. 6374

Q. What connection did you have with that company? A. Secretary and Treasurer of the company.

Q. Were you a stockholder in the company? A. Yes, sir.

Q. Who was the President of that company? A. George A. Ditewig.

Q. Where are the mines of the Maplewood Coal Company located? A. Farmington, Illinois, Fulton County. 6375

Q. Between the years 1903 and 1909, did the Maplewood Coal Company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Who, for your company, made the purchases of black blasting powder? A. Myself and Mr. Ditewig.

Q. Between the years 1903 and 1909, did you make any purchase of black blasting powder from the Buckeye Powder Company? A. Yes, sir.

Q. You purchased some Buckeye powder? A. Yes, sir.

Q. Can you state approximately about the date of those purchases? A. Well, there was powder purchased along in January, February and March,

6376

James F. McElwee—Direct

1905, that I am sure of; there might have been some previous to along in there.

Q. Will you state whether or not you had any interest in the Buckeye Powder Company? A. Yes, sir.

Q. What interest did you have? A. I think I had 50 shares of stock.

Q. Did the President, Mr. Ditewig, of your company, have any shares of stock? A. He had a like amount.

6377

Q. Do you recall what was the first amount of Buckeye powder used in your mine at the Maplewood Coal Company? A. I think the first amount used was some kegs that were sent out there by Mr. Tom Reynolds, who was with the Buckeye Powder Company at that time, for free distribution among the miners.

Q. Did you have any conversation with this agent of the Buckeye Powder Company that you have mentioned, with reference to the purchase of Buckeye powder? A. Yes, sir.

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Q. State what that conversation was? A. Mr. Reynolds was a former president of the United Mine Workers, and after he left the United Mine Workers, he came to me one day and wanted to know what powder we were using, and I told him du Pont, and he said he was figuring upon a position with the Buckeye Powder Company, and wanted to know, in case that he secured the position, if we would do business with him, and I told him that we were more than anxious to do it, on account of having some financial interest in it, and being able to purchase powder cheaper than the du Pont. He wanted to know if I would speak to Mr. Waddell about getting him the position, or recommend him to Mr. Waddell. Then, after he went to work for the Buckeye Powder Company he called on us. I

went to the mine with him one day, and I introduced him to the mine manager, who took him through the mine, and he spent the day there, or a portion of the day, rather, interviewing the miners, and after he came out, he told me that he had arranged to send a number of kegs of powder there, I don't remember how many now, for free distribution to different miners; that the mine manager would select the miners whom he thought were good practical men, and were well versed in the handling of powder, and wanted permission to make the free shipment, which was granted him.

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Q. Do you know or not, whether this Buckeye powder was used in your mine at Maplewood? A. Yes.

Q. It was used there? A. Yes.

Q. After that did you make any purchase of powder of the Buckeye Powder Company? A. We did.

Q. How many kegs did you purchase? A. I am not clear how many was purchased first, but there was some purchased and used by the men; I am not clear, but then I know it was used and gave very good satisfaction. Then we ordered a minimum car of 400 kegs.

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Q. You then ordered 400 kegs? A. Yes, sir.

Q. State whether or not this car of 400 kegs was, to your knowledge, used in the mine? A. It was.

Q. With what results? A. With excellent results. The men pronounced it one of the best powders they had ever used.

Q. After this was used, did you order any further powder of the Buckeye Powder Company? A. Yes, sir.

Q. How much did you then order? A. I think another car, to the best of my knowledge.

Q. State whether or not this last order that you

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James F. McElwee—Direct

have referred to, was used in the mine? A. Yes, sir.

Q. With what results? A. The powder gave no results whatever; it was not screened; I think the powder we ordered was a single "C", and the powder graded from a single "C" down to the size of "BB" shot.

Q. State whether or not you personally made an examination of the powder? A. I did.

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Q. After that examination, did you have any conversation with any officer of the Buckeye Powder Company with reference to this powder? A. Yes.

Q. With whom? A. I referred it to Mr. Waddell.

Q. State fully what conversation you had with Mr. Waddell regarding it. A. I showed him a sample of the powder, and Mr. Waddell said there was something the matter with their screens, there had been some change made in their screening arrangement, and as a result, the powder was not properly screened.

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Q. Did Mr. Waddell say anything with reference to any other powder that he would furnish? A. Well, he said he would send out some other powder that would be properly screened, in the place of it.

Q. Mr. Waddell said that? A. Yes, sir.

Q. State whether that was done? A. Yes, sir.

Q. Was this substituted powder used, or attempted to be used, in your mine? A. Yes.

Q. With what results? A. The miners claimed that it was not the same quality of powder as the first car, and said they couldn't use it, and refused to use it.

Q. They refused to use it? A. Yes, sir.

Q. What, if anything, was done by the Buckeye Powder Company with reference to this powder; did they send anyone to you? A. Yes.

Q. Who? A. They sent a man by the name of Lettsome, out to the mine.

Q. State whether or not he made any examination of the powder. A. He put in a day in the mine, interviewing the miners, and I was at the mine that day. Mr. Lettsome and I had a talk in the office afterwards.

Q. State what that conversation was. A. I asked him what he found, and he said that in his investigation he found out that the men were dissatisfied with the powder.

6386

Q. The miners? A. Yes; that it was not giving results; that the first powder they used was very satisfactory powder, and in case he could get the same grade of powder, it would be satisfactory.

Q. What did you say? A. I told him I hoped he would keep in very close touch with the thing, that we were anxious to use the Buckeye powder, on account of being able to purchase it cheaper, and, besides, Mr. Ditewig and I had some interest in the Buckeye Powder Company, and we naturally were very anxious to use the powder of that mill.

6387

Q. You said this to Mr. Lettsome? A. Yes. He said he would have an interview with Mr. Waddell, and he was confident powder could be sent out that would be satisfactory. We later made another test of some other powder, under the direction of Mr. Lettsome.

Q. The test was made under his direction? A. Yes, and it didn't give results. The men objected to it, and refused to use it. I then took the matter up with Mr. Waddell, and he claimed that the powder hadn't been made—

Q. What did he say? A. I asked him why we couldn't get powder the same as the first shipment, and he claimed the formula had been changed, but he would make some powder under the old formula.

6388

James F. McEllice—Direct

He claimed his powder was better than the du Pont; that the ingredients that went into it were better, but if it didn't give the results, he would make some the same as the shipment that did give satisfaction. We made a trial of that, and it gave no better results than the other, and the miners made a demand on us to furnish them du Pont powder, and under our contract with the United Mine Workers, we were compelled to furnish powder satisfactory to the miners, so we discontinued further use of the Buckeye powder.

6389

Q. State, after this trial of Buckeye powder that you have spoken of, what powder was used in your mine. A. The du Pont.

Q. You used du Pont powder after that? A. Yes, sir.

Q. State how the price of du Pont powder compared with the price of Buckeye powder. (Objection overruled.) A. I think the du Pont was about 15 cents a keg dearer than the Buckeye.

Q. Fifteen cents, did you say? A. Fifteen.

6390

Q. After you made these purchases of Buckeye powder, will you state whether or not you had any communication or conversation with any agent of the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, with reference to Buckeye powder? A. No, sir.

Q. You didn't have? A. No.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company as defendants, the Buckeye Powder Company has given the name of the Maplewood Coal Company as a customer of

the Buckeye Powder Company induced by these defendants to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not any of these defendants, or any agent or representative of them, or any other person or corporation, ever induced the Maplewood Coal Company to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled; exception allowed.)

A. No, sir.

6392

Cross-examination by Mr. Abbott:

Q. What do you understand by the word "induced," in giving your answer to the last question propounded to you? A. What do I understand by it?

Q. Yes. A. To ask us to discontinue the use of it, or use other influence to us not to use it.

Q. You mean any one individual coming to you as an agent or otherwise, and making that request of you? A. In any shape, yes.

Q. Who were the agents of the du Pont Powder Company at that time? A. The only man at that time, that I had ever met, connected with the du Pont Powder Company was Mr. Donnelly, and their local representative here, Mr. Off; I guess he was selling agent for them.

6393

Q. Mr. Off? A. Yes.

Q. You were under contract with the du Pont Powder Company at the time that you stated, were you not? A. Yes, sir.

Q. When was the first contract you made with them; when was it dated? A. I couldn't tell.

Q. You don't know? A. No; we used du Pont powder for 14 years, and I couldn't tell.

Q. Have you any of those contracts? A. No.

6394

James F. McElwee—Cross

Q. Have you any of those contracts with you? A. No, sir.

Q. Have you been under contract all the time? A. Yes.

Q. You have, have you not? A. Yes, sir.

Q. Since you first began? A. Yes, sir, for 14 years. Our contracts, some of them, were made with Mr. Off.

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Q. Do you know where those contracts are? A. Why, no, I don't; we probably have them in our files some place; I don't know whether they have been destroyed. It's not customary to keep stuff for 14 years.

Q. Will you see if you can find them? A. Yes, I will.

Q. And send them to the Commissioner? A. Yes, if I can find them I will; we are limited to storage room.

Q. If you don't find them, will you write him to the effect that you can't find them? A. Yes. During what period?

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Q. From the time you first began making contracts down to 1909.

Q. You stated a while ago that you were interested in the Wolschlag? A. Yes, sir.

Q. Is that a corporation? A. Yes, organized under the State of Illinois.

Q. What is the technical name? A. Wolschlag Co-operative Coal Company.

Q. Is that the same as S. Wolschlag Brothers? A. I never heard of that.

Q. You don't know? A. No.

Q. Do you know anything about whether that company is under contract with the du Pont Company, or any of the parties in this action? A. It probably refers to the same thing. I think when S. Wolschlag was President of the Wolschlag Co-

operative Company, it is possible that he, probably, bought the powder himself; I don't know as to that, that's just my opinion of the matter.

Q. You haven't any knowledge yourself of any contract that Wolschlag Brothers have? A. I have only been interested in the Wolschlag Company from April 15, 1912.

Q. You are not interested in this suit in any way? A. No, sir.

Q. Not at all? A. No.

Q. Your interest in the Buckeye Powder Company, when did that cease? A. Well, I can't give the date; I know I sold my stock for 50 cents on the dollar; I turned it over in blank to Mr. Waddell, at the time he made the transfer; he got, probably, all of it. I think it was about four years last fall.

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Q. Do you know what disposition your partner made of the stock? A. The same as mine.

Q. Do you remember any conversation or transaction that you had with Mr. Waddell at the time when he negotiated the sale of the Buckeye Powder plant, for the sale of your stock? A. Yes, sir.

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Q. I will ask you if Mr. Waddell didn't ask you to join with the company and give your consent to the sale of the Buckeye Company's plant, and that you refused to do so? A. No, sir.

Q. That didn't happen? A. No, sir.

Q. Until after he agreed to purchase your stock? A. No, sir, absolutely no, sir.

Q. And isn't it a fact, that at that time when he told you that the dividends would be 25 cents on the dollar, you refused to join until he agreed to pay you 25 cents premium over and above what other stock was getting in the distribution? A. No, sir. I can tell you the conversation.

Q. Tell it. A. We told him we would not sell our stock at that price; that we had lost on it all the

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James F. McElwee—Cross

way through, and that on account of the way the thing had been mismanaged and handled, that we were sick of the whole thing, and we would prefer selling to losing the whole lot, and we gave Mr. Waddell an option on it then for a certain time at 50 cents on the dollar, which he exercised later.

Q. And he exercised that because it was necessary to have your consent to join in the sale— A. He didn't say anything of the kind.

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Q. Because it was necessary to give your consent, in order to be able to make the sale at all?

Q. Do you know whether Mr. Waddell bought anybody else's stock but yours and your partner's? A. No, I don't.

Q. Don't you know as a matter of fact, that he did not? A. Only what Mr. Waddell told me, that he had bought Mr. Clark's stock and other stock at 25 cents, and Mr. Clark also told me he sold his for 25 cents. That was after the deal was over.

6402

Q. Don't you know that none of the stockholders of the Buckeye Powder Company sold their stock except you, and that all the rest of them simply took their dividends, and, so far as you know, didn't they all own their stock then? A. Then, Mr. Waddell lied to me, if that is not the case. I am taking Mr. Waddell's word for it.

Q. You and Mr. Waddell are not on friendly terms? A. Mr. Waddell and I never had a word in the world, never an unkind word passed between us; we done everything in our power to make the thing go, and used that powder. I don't think there is a mine in Illinois that tried harder to use the powder than we did.

Q. Who was the manager of your mine at the time when you say you were using Buckeye powder? A. When these tests were made?

Q. Just answer the question, please. A. We had

different managers, and if you will tell me what you want, I will answer it.

Q. What I asked you, or what I had in mind to ask you was, who were your managers or manager at the time when you used Buckeye powder? A. Charles Whennen.

Q. Did you have any other manager? A. I had other managers at other mines.

Q. Where you used Buckeye Powder? A. No; Mr. Whennen was the manager during the time the test was made of Buckeye powder.

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Q. What date was that? A. Well, off hand I can't give the date, but to the best of my recollection, it was along in January, February and March.

Q. What year? A. 1905.

Q. How much Buckeye powder did you use before you made this so-called test? A. Just a few odd lots that were sent out as a test. I think it was a donation from Mr. Waddell for free distribution.

Q. Do you know when you made the first purchase of Buckeye powder? A. No, I don't; I didn't keep a memorandum.

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Q. Why was it that you didn't make a test of this powder until 1905, if you were so anxious to do business with the Buckeye Powder Company? You had been interested in it for some time before that? A. The reason was, that the use of powder at a mine is governed by the contract between the Illinois Coal Operators' Association and the United Mine Workers, and the United Mine Workers have as much to say about the use of powder as we had, and we had to work into the thing; if you want to make a radical change in powder at any mine, you will have trouble on your hands with your miners, and you have to use a great deal of precaution in making the change.

Q. And you were two years in all before you

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James F. McElwee—Cross

made up your mind that you would change or try to make use of Buckeye powder? A. No, we were trying to work into the thing all along.

Q. According to your own statement, you say you didn't make this test until some time in 1905, the Buckeye mills started in 1903? A. I think so, I don't know.

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Q. That was two years. A. It was up to the Buckeye people to help us on that, and after Reynolds came in; the reason Reynolds was hired was to use his influence on the United Mine Workers to get them to use it. We had conferred about the use of it with Mr. Waddell a number of times.

Q. I want the real reason why you didn't use Buckeye powder, or attempt to use Buckeye powder until some time in 1905, when you say you made this test; wasn't it because you were under contract with the du Pont Powder Company, and required to purchase powder of them? A. No, sir, we were under contract with the du Pont people when we made the test.

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Q. But your contract was about to expire at that time? A. I couldn't say; there never was a time when we didn't have a contract with the du Pont Powder Company since we have been doing business, either with them or with Mr. Off; most of them were with Mr. Off.

Q. You got ready to make a demonstration or test, and had Mr. Reynolds come there a little while before your contract with the du Pont Powder Company, which was made in 1903, was to expire? A. I can't say when our contract was to expire; we discussed the thing with Mr. Waddell—

Q. I will ask you the question. If you will answer the question, then you can explain it. I want to confine you to my question and I don't want you to go into any rambling speech.

(Stenographer repeats the question).

A. No, sir, we took up the question with Mr. Waddell about having a contract with the du Pont Powder Company, and using his powder while we were under contract, and he remarked that the du Pont contract was a cut-throat contract, and there wasn't a court in the country that would sustain it, and we wouldn't have any harm in breaking the contract.

Q. That, however, didn't impress you? A. It certainly did. After that, we helped him to make this test.

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Q. Then, it was about the time your contract was to expire, and because it was to expire, or because you thought it could be broken, that you undertook to make this test? A. I have answered before, that I can't tell from memory whether our contract at that time was about to expire or not; I know we consulted with Mr. Waddell about the feasibility of buying his powder, and Mr. Waddell said it was a cut-throat contract, and he didn't think any court—

Q. I say, when your contract was about to expire, or when you thought it could be broken? A. Yes; we acted on his advice and made the test.

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Q. Now, you stated, if I have correctly noted you, that the miners claimed that it was not the same quality of powder? A. Yes, sir.

Q. Did you yourself do any handling of the powder, or are you a practical miner? A. During that period I was giving the mines personal supervision, and was at the mines almost every day.

Q. You stated that the powder didn't appear to be of the same grade— A. Yes, of my personal knowledge. I saw the powder and showed samples of it to Mr. Waddell.

Q. What grade was it that you wanted? A. I think our order called for single "C" powder; that is what we used.

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James F. McElwee—Cross

Q. And what kind did you get? A. This powder would be what we term in the coal business, "Mine run;" it was not screened at all; it was graded down to pieces the size of "BB" shot, you know, up to "CC" size.

Q. Have you ever had any experience with other powders besides the Buckeye powder? A. The du Pont.

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Q. Did you ever get any different grades of du Pont powder at different times? A. No, and we never had a complaint of du Pont powder in all the powder we purchased from them.

Q. Did you ever ship back any du Pont powder? A. No, sir.

Q. Didn't you ship back a car of du Pont powder a short time before the Buckeye mills went into business? A. No. Yes, we did.

Q. Now, didn't you ship back two cars of du Pont powder about that time? A. Not to my knowledge, no, sir.

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Q. What did you ship it back for? A. I think that was during the period, if my memory serves me right, it was during the period of the anthracite strike, and we had always got our powder from the Mooar mills, and that mill was crowded with orders, and they shipped our powder from the Brandywine, the Brandywine mill. The miners made a complaint on it and we took the matter up with the powder company, and they claimed that on account of the anthracite strike they couldn't supply it from the Mooar mill and they had been shipping from the Brandywine mills, and for us to return it, and hereafter they would ship it from the Mooar mill.

Q. Those cars contained a thousand kegs? A. I don't know whether it was eight hundred or a thousand. I think we generally bought one thousand kegs in a car.

Q. You knew that the Buckeye Powder Company was constantly manufacturing powder and sending it out in very large quantities to consumers of powder in various parts of the country, and it was being used? A. Yes, sir.

Q. You knew that some concerns had used thirty or forty thousand kegs of it and it had proved to be satisfactory to them, didn't you? A. No, I didn't.

Q. You didn't know that? A. No.

Q. You were a stockholder in the company and you could have found that out if you had made an investigation? A. I suppose I could if I had made an investigation, but I didn't make an investigation.

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Q. You were not very much interested in making the company a success? A. Yes.

Q. Why didn't you make an investigation? A. I didn't.

Q. What did you do to make it a success? A. Tried to use their powder; that was one of the things.

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Q. Did you try to help extend their business? A. Mr. Waddell advised us to—

Q. Answer my question, yes or no, then you can explain it. A. No. Mr. Waddell advised us to keep the matter quiet, that we were stockholders in the company and in case the miners knew we were financially interested in it they would not want to use the powder. He said they would think we wanted to use his powder.

Q. Mr. Waddell said that? A. That's what he told us.

Q. Did you deem it necessary to post a notice or send out a circular to the miners telling them you were interested in the mills, and for them to use their powder? A. No, we knew that would be the worst way to do it.

Q. Then you realized what Mr. Waddell had told you was good—you realized that his advice was good? A. Yes.

Q. Then there is no criticism with Mr. Waddell for that? A. I am not attempting to criticize Mr. Waddell at all. I intended to explain, if you allowed me, but you didn't allow me to do it.

Q. I have no desire to restrict you in any way to make it clear. Explain it. A. That is what I attempted to do with you. I wanted to explain—
6419 you wanted to know why we didn't try to use the powder earlier than what we did.

Q. If you didn't explain it satisfactorily, do so; you can do so now. A. What I wanted to say you wanted to know if it was because we were afraid of breaking our contract. The thing was that we wasn't afraid of breaking our contract with the du Pont Powder Company, but we were afraid of having labor trouble with our men, and we wanted to work the matter diplomatically so we wouldn't have a strike, because the coal business was a very peculiar thing. You couldn't tell what the miners
6420 were going to do, and in many ways it was a financial loss to us to have a day off. It was a question of producing coal.

Q. Isn't it a fact that the miners are somewhat dictatorial about the kind of powder they will use? A. They are pretty particular about it.

Q. Isn't it a fact that they are dictatorial, and sometimes unreasonable in making their demands upon the operators? A. No, I wouldn't say that.

Q. Why wouldn't you? A. I don't think I would say that.

Q. Isn't it a fact, within your knowledge, that a great deal of the disturbance which is created between the miners or which exists between the men and the operators, relating to the use of powder, is created and worked up by powder salesmen and

dealers in powder for the purpose? A. I don't think so.

Q. Don't you know it to be a fact that certain influential miners have been employed by powder companies and their representatives for the purpose of creating a disturbance and particularly for the purpose of keeping Buckeye powder from being used in certain mines? A. No, sir.

Q. You say you don't know it? A. I never heard of it.

Q. Don't you know that it is a fact that in mines very close to you and in the neighborhood of the mine where you were attempting to use the powder that very thing was done? A. No, I don't know.

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Q. Did you ever hear of any such thing being done? A. No, sir.

Q. Are you a member of the Coal Operators' Association of the State of Illinois? A. Not at the present time.

Q. Were you a member during 1903 to 1909? A. I was a member of the Illinois Coal Operators' Association from the organization of it until the close of the strike, after the strike was settled, the strike of 1910, I think.

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Q. Were you ever an officer of that association? A. No, sir.

Deposition of GEORGE M. BOYD, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. At Knobnoster, Missouri.

Q. How long have you lived there? A. 24 years.

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George M. Boyd—Direct

Q. Have you any connection with the D. M. Boyd Brick and Tile Company, during any time?
A. Yes, sir.

Q. Is that a corporation? A. No, a co-operative company until 1912, in May; it was up until that time, and then it was incorporated.

Q. What business is that company engaged in?
A. In the manufacturing of all clay products, such as brick, tile, and also miners and shippers of coal and clay, fire clay.

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Q. Was that company in business between the years 1903 and 1909? A. Yes, sir.

Q. Between those years did you use any black blasting powder in that business? A. Yes, sir.

Q. Who purchased the supplies for the G. M. Boyd Brick and Tile Company? A. G. M. Boyd purchased all the explosives.

Q. You are the head of the company? A. Yes, sir.

Q. And you purchased all the explosives? A. Yes.

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Q. Between those years, did you purchase any black blasting powder known as Buckeye powder?
A. Yes.

Q. Do you recall about what time you purchased that powder? A. I couldn't exactly tell you as to just what date; I think it was in 1903 and '04; possibly some in 1904; I wouldn't say positive what year it was that we bought powder from those people.

Q. You don't know exactly? A. No.

Q. To the best of your recollection, it was in the years 1903 and 1904, then? A. I think so.

Q. Will you state whether or not you continued to purchase powder of the Buckeye Powder Company? A. No, sir.

Q. You did not? A. No.

Q. Will you state the facts or circumstances which led up to your ceasing the purchase of Buck-

eye powder and purchasing from some one else? A. The only reason we quit buying Buckeye powder was, that we could get the powder a little quicker from Kansas City, from where they shipped it from, and powder cost just the same shipped from Kansas City as when we bought off them, and it was only a matter of being convenient for us; that was the reason for us changing.

Q. After you began the purchase of Buckeye powder from the Buckeye Powder Company, did you have any conversation or communication with any agent or representative of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir.

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Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company, against the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company, as defendants, the Buckeye Powder Company, in answer to a demand of the defendants for the names of customers which the Buckeye Powder Company alleged ceased to become customers of the Buckeye Powder Company, or abandoned the purchase of powder from the Buckeye Powder Company by the inducements of the defendants or certain other persons and companies mentioned in the suit as co-conspirators, whose names I will give you later in this question, the Buckeye Powder Company, in answer to the above demand, gave the name of G. M. Boyd Brick and Tile Company as a customer of the Buckeye Powder Company, which was induced by these defendants or other persons and companies which I will name, as one of the parties induced to abandon the purchase of powder from the Buckeye Powder Company. The names of the persons in the suit alleged to be co-conspira-

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George M. Boyd—Cross

tors of the defendants that I have mentioned, are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, and the companies are: The International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. I will now ask you whether any of these defendants which I have named, or any of the persons or companies which I have named, and alleged to be co-conspirators of the defendants, either all or any, or the agents or representatives of all or any, ever induced the G. M. Boyd Brick and Powder Company to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled. Exception allowed.) A. No, sir.

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Cross-examination by Mr. Abbott:

Q. Do you know all of the names of the various persons just read to you? A. No, sir.

Q. You do not? A. No; I don't believe I do; I have heard several of the names, but all of them I possibly never did—

Q. Have you had a written document presented to you, suggesting such a question as this, recently? A. No, sir.

Q. Have you had a written statement presented to you, asking you to give your views concerning

a similar statement as that propounded here? A. I believe I had a letter from them.

Q. Did it enclose a typewritten statement similar to that which Mr. Katzenbach made to you? A. No, sir.

Q. Were you asked to sign anything? A. No, sir.

Q. You didn't sign anything? A. No, sir.

Q. You are sure of that? A. Yes.

Q. What impression do you gather from the reading of those names over to you; you answered "No?" A. Yes.

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Q. How do you know that some person representing some of those persons has not called on you and discussed powder matters with you? A. I know, because no one at the works ever had any authority to purchase anything, because if they went there to any one, they would send them to me, because they all worked around the brick works.

Q. You have had people call on you, have you not, from 1903 to 1909 with reference to powder matters? A. Possibly did; I possibly did.

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Q. Do you recall who they were and who they represented at that time? A. No, sir.

Q. You don't know but what they might have represented some of these persons whose names were read over to you? A. They might have had, but I don't think there was ever an agent come there that ever discussed the price of powder; I told them I was getting it at a certain price, and they never said they could get it any less; I always bought in small quantities, and it was no use of them talking to me.

Q. How much powder did you use per year? A. About 25 kegs per month, possibly; that would be 12 months in a year, that would be 25,—300 kegs.

Q. Did you use that much during the years 1903 to 1909? A. About that much.

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John Bohlander—Direct

Q. You used about that much. A. Yes, sir.

Q. About 300 kegs? A. I wouldn't say positive; we might use that much and might use less; I couldn't say exactly. There are some of those years, possibly, that we would use 40 or 50 kegs more than the preceding year.

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Deposition of JOHN BOHLANDER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Bohlander, where do you live? A. Pekin, Illinois.

Q. How long have you lived there? A. About 50 years.

Q. What business are you engaged in? A. At the present time?

Q. Yes. A. None.

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Q. Between the years 1903 and 1909, what business were you engaged in? A. I owned and operated a coal mine.

Q. Where was that coal mine located? A. Pekin.

Q. Did you conduct the business yourself, or as a member of a firm? A. As a member of the firm.

Q. What was the name of the firm? A. Bohlander Brothers.

Q. Who was that firm composed of? A. Well, the four brothers started it in the beginning, for a short time; but most of the time, it was John and Edward.

Q. Have you had any experience in the mining of coal yourself? A. I was a miner all my life; I started when I was eleven years old.

Q. State whether you have used any black blasting powder in your mining operations? A. Yes.

Q. State how you used black blasting powder.
A. How do you use it?

Q. Yes; what is the operation, from the start to the end of it? A. It is used by boring holes in the coal and blasting it out.

Q. After you bore the hole, what do you do? A. You make a cartridge, whatever your judgment is, 10 or 12 or 14 inches, and tamp it up and just start it with a fuse.

Q. Between the years 1903 and 1909, did you use black blasting powder in your mining operations? 6440

A. Yes.

Q. State whether or not, between those years, you made any purchase of blasting powder, known as Buckeye powder, of the Buckeye Powder Company? A. Yes.

Q. Who made those purchases? A. I did.

Q. How many purchases of Buckeye powder were made, to your knowledge? A. Three, I think; not more than three.

Q. Will you state whether or not you continued the purchase of Buckeye powder after these three purchases? A. We did not. 6441

Q. Will you state whether or not you personally used any of this powder known as the Buckeye powder? A. Yes, sir.

Q. State what results you secured from it, and what you did with it. A. Well, the story is this: that we could save the freight rates on powder from Peoria down, by sending our teams directly over to the Buckeye mill and hauling it; therefore, we saved about 15 cents a keg by using it that way, and we got, I don't know how many kegs, as a trial order, but the amount of the bill come to \$76.50; I looked that up the other day; but the miners were not satisfied with it, so we got in the place of "CC," we got single "T," or at least a grade lower, quicker, and I sent the team over to the Buckeye mills; I

went along with them myself, just for the ride, and got 100 kegs, but the miners couldn't mine as much coal with that as with du Pont or Hazard, that we were using before, so I wouldn't take the miners' word for it, and I went down and tried a keg myself and found out we couldn't mine as many tons per keg with Buckeye as with the other, so we had to abandon it.

6443 Q. State, Mr. Bohlander, how many kegs you first got, to your recollection? A. I don't remember.

Q. Approximately? A. Well, the bill amounted to \$76.50; it was probably 50 or 60 kegs.

Q. Do you know, of your own knowledge, whether that was used in the mines? A. Yes.

Q. It was used? A. Yes, sir.

Q. Do you know the results of the use of it? A. Yes, sir.

Q. What were the results? A. The results was, that the miners couldn't mine as much coal with that per keg as with the du Pont or Hazard.

6444 Q. Did you subsequently try any other grade of Buckeye powder? A. Yes, sir.

Q. What kind or grade of powder was that? A. Well, I don't remember; we were using "C" and double "C" of the du Pont, and then we thought by using a quicker single "F," for instance, we would get the same results, but we didn't.

Q. Who purchased this second order? A. I did; I done all the business of the firm.

Q. Who went and got the powder and brought it to your mines? A. The last order?

Q. Yes. A. Our coal hauler and coal team, and I went with him.

Q. Did you use any of this second batch of powder yourself? A. Yes.

Q. State how you used it. A. I used it the same

as any miner would, simply to give it a good trial. I wouldn't take the miners' word for it.

Q. What steps did you take in the use of it? A. I went down and got a keg and bored holes the same as any coal miner would.

Q. What was the results of your trial? A. The result was, that you couldn't mine as much coal with the Buckeye powder by about 25%, as with the other.

Q. After you purchased this Buckeye powder, did you have any conversation or communication with any agent of the Buckeye Powder Company with reference to Buckeye powder? A. No, sir.

6446

Cross-examination by Mr. Abbott:

Q. How many purchases of Buckeye powder did you say you had made? A. Well, we made two payments, but I think we got three lots.

Q. What was the total amount of your purchases? A. September 2nd, we paid him—I don't remember the date we got the powder, but a short time before that. September 2, \$76.50; October 16, 1905, 100 kegs, at \$120.00.

6447

Q. You said you had looked up the matter; you are giving your testimony from some data you have examined recently? A. Yes, that part of it I looked up, yes, but—

Q. When? A. About two weeks ago.

Q. At whose request did you make that examination? A. Nobody's.

Q. At whose request did you come here to testify? A. Mr. Moffatt telephoned for me.

Q. Who is Mr. Moffatt? A. Ed Moffatt; you know as much about it as I do about it; I have known him for twenty years or more.

Q. Won't you tell me? A. He has been an agent

6448

John Bohlander—Cross

for Dooley Brothers for a long time in the powder and oil business.

Q. Do you know who Dooley Brothers are? A. Yes.

Q. What relation have they to this case, if you know? A. None, only we bought powder off Dooley Brothers.

Q. What kind did you buy off them? A. Du Pont.

6449 Q. Did you ever sell them any coal? A. Dooley Brothers?

Q. Yes. A. I think not.

Q. You never did? A. I guess not.

Q. What kind of du Pont powder were you using at the time you began buying Buckeye powder which you testified to? A. I don't remember—"C" and double "C."

Q. What kind of powder did you buy of the Buckeye Powder Company? A. We started at the same; the first shipment was "C," and I think the last was single "F."

6450 Q. You stated you didn't get as good results as with the du Pont powder; did you mean results as to tonnage of coal? A. Yes.

Q. And you yourself handled the powder? A. Yes, sir.

Q. And drilled the holes and put in the shots? A. Yes.

Q. And kept track of the results? A. Yes, sir; we give it a good, fair trial.

Q. How thick a vein of coal is yours? A. It's called five feet; it would average a little less.

Q. Five feet? A. Yes, sir.

Q. Were you under contract with the du Pont Powder Company, or any other company to buy black blasting powder at any time between 1903 and 1909? A. No, never with anybody.

John Bohlander—Redirect—Recross
Daniel T. Sanders—Direct

6451

Re-direct examination by Mr. Katzenbach:

Q. When you ceased the purchase of Buckeye and went back to the purchase of powder of the du Pont Powder Company, state how the price of the du Pont powder compared with that of Buckeye?
A. It cost us a little more because we didn't have to—

Q. Which cost you a little more? A. The du Pont.

6452

Re-cross examination by Mr. Abbott:

Q. What did you pay for du Pont powder? A. I think \$1.35.

Q. What did you pay for Buckeye powder? A. \$1.20 over at the mills.

Q. Was there any rebate on either of those figures? A. No.

Q. In how large quantities did you buy? A. In 100 keg lots.

6453

Deposition of DANIEL T. SANDERS, a witness produced for the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Sanders, where do you live? A. I live three-quarters of a mile West of Glassford, Peoria County.

Q. Between 1903 and 1909, what business were you engaged in? A. I was engaged in farming and running a coal mine too.

Q. Where were your coal mines located? A. On Section 27, Timber Township, Peoria County.

6454

Daniel T. Sanders—Direct

Q. Are you still engaged in the coal mining business? A. No, sir.

Q. When did you cease the coal mining operations? A. In 1905.

Q. Have you been engaged in any coal mining operations since the year 1905? A. Only drawing a royalty.

Q. You lease your mines? A. Yes.

Q. And you no longer continue to be an operator? A. No, sir.

6455

Q. After 1905, did you use any black blasting powder in your mines? A. No, sir.

Q. Between the years 1903 and 1905, did you use any black blasting powder in your mines? A. Yes.

Q. Who made the purchases of it. A. I did.

Q. Will you state whether or not, between the years 1903 and 1905, you made any purchases of black blasting powder, from the Buckeye Powder Company, known as the Buckeye powder? A. Yes, sir.

6456

Q. How many purchases did you make? A. Well, two or three different times I don't know exactly how many times, but it was about three times.

Q. Do you recall the times of purchase? A. No, sir.

Q. Can you state approximately what they were? A. No, I can't.

Q. State why you purchased Buckeye powder? A. Why, I could buy it cheaper than the other.

Q. Do you, of your own knowledge, know whether the Buckeye powder was used in your mine? A. Yes, sir,

Q. With what results? A. Not very good results.

Q. State whether or not you employed miners to operate in your mines? A. Yes, sir.

Q. Did or did not these miners—or state what the attitude of the miners was towards Buckeye powder. A. They didn't like the powder.

Q. State in what manner they showed a dislike for the powder. A. It didn't work as good as the other powder did.

Q. State whether or not they would use the powder. A. They would not.

Q. After these trials of Buckeye powder in the mines, state whether or not you continued to purchase Buckeye powder.

Q. Will you state whether or not this powder was tried in your mines, the Buckeye powder? A. Yes, sir.

6458

Q. After the trials of Buckeye powder in the mines, will you state whether or not you continued to purchase Buckeye powder? A. No, sir.

Q. Why didn't you continue to purchase it? A. The miners refused to use it.

Q. After the purchase of Buckeye powder, will you state whether or not you had any conversation or communication relating to Buckeye powder, with any agent or representative of the E. I. du Pont de Nemours Powder Company? A. No, sir.

Q. You didn't? A. No.

6459

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours, the Buckeye Powder Company has given your name as one of their customers which was induced to abandon or stop the purchase of powder by the E. I. du Pont de Nemours Powder Company. Will you state whether or not these companies, or any agent or representative, or any other person or corporation, induced you to stop the purchase of powder from the Buckeye Powder Company? (Objection overruled. Exception allowed.) A. No, sir.

Cross-examination by Mr. Abbott:

Q. What agent or agents of the E. I. du Pont de Nemours Powder Company do you know? A. Dooley Brothers down here.

Q. Did you ever know any other agent or representative of that company? A. No.

Q. No other? A. No.

6461 Q. Did you ever have any business with any other agent or representative of that company? A. No, sir. Well, I don't know; Newsam Brothers had that powder; I got powder from them. I don't know whether that would be that question or not.

Q. Do you know Mr. Moffatt? A. Moffatt?

Q. Yes. A. No, sir. I may know him to see him.

Q. At whose request did you come here to testify? A. The Dooleys down here.

Q. Were the Dooley Brothers agents of the E. I. du Pont Powder Company at the time you made these purchases of Buckeye powder that you have testified to? A. Yes, sir.

6462 Q. How do you know that the miners in your mine were not agents of the E. I. du Pont de Nemours Powder Company; these miners that objected to the use of the powder? A. I don't know, only for the reason that they were supposed to work for day's work for a living, and I didn't think they would be agents for any company.

Q. That is your reason? A. Yes; they lived in my house and they were in my employ, and I didn't think they were agents.

Q. How many purchases did you make of Buckeye powder? A. I don't think I made over three.

Q. Will you say you didn't make more than that? A. No, I won't say I didn't; I don't think I made over three purchases.

Q. But you won't say you didn't? A. No.

Q. How many kegs did you get the first time?
A. I think ten kegs.

Q. And how many the second time? A. I think ten kegs.

Q. And the third time? A. Probably I got twenty kegs, I don't know exactly, but I bought in ten keg lots.

Q. What year did you make these purchases? A. I think in 1904.

Q. And how far apart were they? A. I couldn't tell that.

6464

Q. How much powder did you use in your mine at that time per month? A. Not very much; I wasn't running very much; I worked from three to eight men.

Q. How many kegs of powder did you consume per month? A. I couldn't say.

Q. Can you give any estimate? A. No, sir.

Q. Was it more than 35 kegs? A. No, it wasn't that many.

Q. Was it 20 kegs? A. It might have been 20 kegs, it might have been.

6465

Q. How many months did you operate during the years? A. Twelve months.

Q. Did you have any other powder during the time that you were using Buckeye powder? A. No, not while I was using Buckeye powder. After I quit Buckeye, I bought du Pont.

Q. After you quit Buckeye, you bought du Pont? A. I bought du Pont powder between times; when I got out of Buckeye, I got some du Pont and tried that.

Q. What did you pay for your du Pont powder at that time? A. I don't know; I think about \$1.60, \$1.45 or \$1.60,—different prices.

Q. Did you testify as to the price you paid for Buckeye powder? A. No, sir.

6466

Ambrose Cummings—Direct

Q. Have you any way of refreshing your memory as to the price you paid for du Pont powder? A. Du Pont powder?

Q. Yes. A. No, sir.

Q. Have you any bills? A. No, I just went up and gave them the cash for it and walked off; I didn't have any agents or make any accounts or anything of that kind; I just give them the money and I got the powder.

Q. You stated that you leased your mines; when did you lease them? A. In 1905.

Q. Whom did you lease it to? A. The Lancaster Landing Coal Company.

Q. Do you know anything about the operation of the mine after you leased it? A. The operation of it?

Q. Yes. A. Not much.

Q. Do you know what powder was used there? A. Du Pont powder.

Q. Do you know whether any Buckeye powder was used there? A. No.

Q. Sure of that? A. Yes.

Q. None was used at all? A. No, sir.

6468

Deposition of AMBROSE CUMMING, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Cumming, where do you live? A. I live in East Peoria.

Q. Between the years 1903 and 1909, what business were you engaged in? A. In the coal business, mining coal.

Q. Were you engaged in it individually, or as a member of a firm or corporation? A. Part of the time I was in partnership, and the balance of the time I was alone.

Q. Under what name did you operate? A. The Standard Coal Company.

Q. Whereabouts were your mines located? A. In East Peoria.

Q. Did you use any black blasting powder in the mining operations in your mines? A. Yes, sir.

Q. Did you purchase the black blasting powder for your mines? A. I did. 6470

Q. Yourself? A. Yes.

Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder of the Buckeye Powder Company? A. Yes, sir.

Q. State the circumstances of that purchase. A. Well, the Buckeye Powder Company sent a representative and tried to induce us to buy powder from them, and they offered us the powder cheaper than we were buying it of the du Pont Powder Company, and I took ten kegs on trial.

Q. Do you know or not, whether these ten kegs of powder were used in your mine? A. Well, part of them were used. 6471

Q. Why was not all of them used? A. The miners refused to use them kegs because they said it wasn't as strong as the other powder.

Q. After this purchase, did you make any further purchases of Buckeye powder? A. No, not from the Buckeye Powder Company.

Q. After you purchased powder of the Buckeye Powder Company, did any agent or representative of the E. I. du Pont de Nemours Powder Company ever have any conversation or communication with you with reference to Buckeye powder? A. No, sir.

Cross-examination by Mr. Abbott:

Q. Do you know who the agents and representatives of the E. I. du Pont Powder Company are?

A. Yes.

Q. Who are they? A. That is the parties that sold me the powder; that was Mr. Moffatt, for Doolley Brothers.

Q. Who asked you to come here to testify? A. Mr. Moffatt, I think.

6473 Q. The same Mr. Moffatt that sold you the powder. Now, you say you only made one purchase of Buckeye powder? A. Yes.

Q. What time was it that you made that purchase? A. In 1906, I don't remember the day.

Q. Are you the only, or were you the only person operating during the years 1905 and 1906 in East Peoria, as the Standard Coal Company? A. Yes.

Q. That was a trade name? A. Yes, sir.

Q. It was not a corporation? A. No.

6474 Q. How many miners did you have in your mines? A. I don't remember at that time; we run from 20 to 45 men.

Q. How many kegs of powder did you consume per month? A. I couldn't tell you without looking over my books.

Q. Will you state approximately? A. Well, it would depend on the amount of men we had working.

Q. I am asking you for an approximate statement. A. Yes, that would be about six or seven kegs per man per month.

Q. Per man? A. Yes, sir.

Q. Were you at any time under contract with Doolley Brothers or anyone else for the purchase of black blasting powder? A. No, sir.

Q. Did you purchase it in the open market? A. Yes.

Deposition of CHARLES MARTIN, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. East Peoria, Tazewell County.

Q. Between the years 1903 and 1905, what was your business? A. Mine manager.

Q. For whom? A. Part of it for the B. and B. Coal Company. 6476

Q. By "B. and B. Coal Company," do you mean Bontges and Bontges Coal Company? A. Yes, sir.

Q. Where were the mines located? A. Tazewell County.

Q. At what point? A. Groveland Township.

Q. What position did you hold with Bontges and Bontges at their mine? A. Superintendent.

Q. In that mine, did you use black blasting powder? A. There was black blasting powder used; I didn't use it.

Q. No, but state whether or not you superintended the use of black blasting powder in the mines. A. Yes, as mine manager, I did. 6477

Q. Do you know or not, whether in this mine in which you were superintendent, any black blasting powder, known as Buckeye powder, was used? A. Yes, sir.

Q. There was? A. Yes.

Q. When was that used? A. Along the latter part of 1904 or '05; now, I wouldn't be sure of that.

Q. Do you know or not, how many kegs of Buckeye powder was sent to the mines? A. I think there was a sample lot of 25 kegs, I think.

Q. State whether or not that was all used in the mines. A. No, sir.

Q. Have you any personal knowledge, that is,

6478

Charles Martin—Direct

knowledge with your own eyes, that any Buckeye powder was used in the mines? A. Yes, sir.

Q. How much Buckeye powder was used? A. Between five and six kegs.

Q. What became of the balance of the powder? A. It was sent back.

Q. It was returned? A. Yes, sir.

Q. To whom? A. B. and B. Coal Company.

Q. State whether or not, with your own eyes you saw the results of the use of the Buckeye powder in the mines. A. I saw the results, yes.

Q. State what those results were? A. That I lost about six rooms.

Q. What do you mean by losing about six rooms? A. Six places; the slate was shot in.

Q. What effect did it have upon the coal? A. The effect it had upon the coal, the force of the powder—the powder, in my estimation, was slow, and it had an effect on the roof, and didn't have any effect on the coal at all.

Q. After this Buckeye powder came to the mines of Bontges and Bontges, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey, the Buckeye Powder Company has stated that the du Pont Powder Company induced the return of powder to the Buckeye Powder Company; will you state or not, whether or not, this powder which you state was returned, was returned as the result of any inducement by anybody on the part of the du Pont Powder Company? A. It was not.

Q. What business are you engaged in at present? A. County Mine Inspector.

Q. A State official? A. A County official.

Cross-examination by Mr. Abbott:

Q. Mr. Martin, when did you say you used this twenty-five kegs? A. Between 1904 and 1905—not the whole 25 kegs wasn't used.

Q. Whom were you representing at that time? A. B. and B. Coal Company.

Q. Who was the B. and B. Coal Company? A. Bontges.

Q. Did Bontges and Bontges have any other mine at any other place you know of, except that one? A. It had one at Petersburg. 6482

Q. Where is that? A. South of Peoria.

Q. Near what station? A. Close to Springfield.

Q. How far was the mine in which you worked, or which you were located, or which you managed, from Krann Station, Illinois? A. Krann Station is in Peoria County, and I was in Tazewell County.

Q. Do you know anything about the business of Bontges and Bontges at Krann Station? A. No, sir.

Q. You had nothing to do with their business at that point? A. No, sir. 6483

Q. You state a moment ago that you had had no conversation with any agent or representative of the du Pont Powder Company? A. I never did.

Q. Do you know who the agents or representatives of the du Pont Powder Company were during this period of 1905? A. No, sir; I didn't know them at all.

Q. Didn't know anyone? A. No, sir; I was a stranger.

Q. Did you know Mr. Moffatt? A. I didn't know him at all.

Q. Do you know him now? A. Yes.

Q. How long have you known him? A. Two or three years.

Q. At whose request did you come here to testify to-day? A. I was requested to come here.

Q. By whom? A. Mr. Moffatt.

Q. The gentleman sitting here? A. Yes, sir.

Q. Do you know the firm of Dooley Brothers in Peoria, Illinois? A. Yes, sir, I ought to.

Q. Do you know them pretty well? A. Yes, sir, I know the firm; I visit the mine in East Peoria; I go sometimes three times a month to the mine.

Q. How long have you known Dooley Brothers?
6485 A. Ever since I have been County Mine Inspector—six years.

Q. Did you know them before that? A. No, sir.

Q. They have a mine adjoining the mine that you were operating for Bontges and Bontges? A. No, it's about a mile and a half difference, or two miles.

Q. By whom are you employed as Mine Inspector? A. Tazewell County.

Q. You are paid by the County? A. Yes, sir.

Q. Did you handle the loading and charging and firing of the shots of Buckeye powder which you
6486 saw used in the mine? A. I should say not.

Q. Who did? A. The miners.

Q. Then, what did they say to you about it? A. They complained about it.

Q. Complained about it? A. Yes, sir.

Q. You sent this powder back because the miners told you it wasn't satisfactory? A. Yes. Wait a minute, now; I didn't send it back just on their making complaint; I made an investigation myself.

Q. Then, tell us just what you did in making the investigation. A. I went in the mines, the places they showed me and told me about, and they said, "Here, Charlie, just look at this shot here; here it's up in the roof and we can't use it;" and they were all good friends of mine, the miners; every man in that mine was a good friend, and they said,

Charles Martin—Redirect
Henry Vonach—Direct

6487

"We don't want to turn you down;" and then I said, "I'll tell you; just give it a trial; do what you can." I was working for the interest of the Coal Company; and they just said, "We'll quit using it," and I had to send the powder back. That's just as true as I am sitting on this chair.

Q. That states all the facts in connection with the matter? A. Yes, sir.

Re-direct examination by Mr. Katzenbach:

6488

Q. Mr. Martin, did you see the room where these shots of Buckeye powder had been fired off? A. I had to see them, because I had to examine the mine.

Q. This mine of Bontges and Bontges, where this powder was used, was located in East Peoria? A. Yes, sir, in Groveland Township.

Deposition of HENRY VONACH, a witness produced on behalf of the defendants, being duly sworn, read as follows: 6489

Direct examination by Mr. Katzenbach:

Q. Mr. Vonach, where do you live? A. Cuba, and run a mine at Lewiston.

Q. How long have you been engaged in the mining business? A. I have been in the mining business for about twenty-two years; of course, I haven't run mines all that time, but I have been in and about mines.

Q. And what work about mines have you done? A. Every kind of work that could be done, except hoisting coal.

Q. Are you a practical miner? A. Yes, sir.

6490

Henry Vonach—Direct

Q. Have you any certificate? A. I have three certificates.

Q. What are they? A. A certificate for a mine, what they call a ten-man certificate; that's the second class, I got one first and one second-class, that's the second class, and one miner's certificate.

Q. Between the years 1903 and 1909, were you engaged in the coal mining business? A. I have been in the coal mining business for about six or seven years.

6491

Q. That is, in what capacity? A. Oh, not a very large business; I have been mine manager for several different parties, mine manager for the Cuba Company at one time.

Q. Were you ever connected with the Crescent Coal Company? A. Yes, sir.

Q. During what years? A. I think I was with them about two years, from 1906, on.

Q. What position did you hold with the Crescent Coal Company? A. Mine manager and general purchasing agent.

6492

Q. While you were with the Crescent Coal Company, did you use any black blasting powder in the mining operations of that mine? A. Yes, sir.

Q. During the time that you were with the Crescent Coal Company, will you state whether or not you purchased any black blasting powder known as the Buckeye powder? A. Yes, sir.

Q. About when did you purchase that? A. I think it was about 1903.

Q. About how much of that powder did you purchase, to the best of your recollection? A. I couldn't say; we had 25 kegs, or something like that, maybe more.

Q. Twenty-five kegs? A. Maybe more.

Q. Will you state whether or not, to your knowledge, that powder was used in the mines of the Crescent Coal Company? A. Yes, sir, it was.

Q. State whether or not you personally used any of that powder? A. Yes, I used some of it.

Q. Yourself? A. Myself.

Q. State what you did personally with the Buckeye powder, and what results were obtained from its use? A. The Buckeye powder didn't do as good work for us as the du Pont at that mine; of course, I have used both powders in several different places.

Q. Will you state what you did when you used the Buckeye powder? A. Well, we wanted to use it, and there was another company there using it, and, of course, they told me about it, and I was going to try it myself; we got some of it and tried it; but I couldn't get as good results as before, and we just quit using it.

6494

Q. You didn't get the results? A. No, sir.

Q. And that is why you quit using it? A. Yes, sir.

Q. Will you state fully just what steps you took in the use of that Buckeye powder? A. Yea, sir.

Q. Go ahead. A. I took it in the mine, and I wanted the boys to use it, and I made some shots with it.

6495

Q. State how you made the shots; just what operation you went through. A. Well, I made the shots the same as any coal miner.

Q. State how you did it. A. Stood up my machine and drilled the holes in. I set it so it would make a good shot.

Q. After you drilled the hole, what did you do? A. Made up my powder, put the powder in and tamped it up and fired the shot, and the next morning when I went, it hadn't done the work, but we didn't give it up then; we made some more shots, and it wouldn't do the work as good as it ought to have done it. Of course, I ain't got nothing against either one of these companies, understand that.

6496

Henry Vonach—Direct

Q. What I want you to state, is just what you saw as the result of the use of Buckeye powder; state what you saw with your own eyes. A. I seen it wasn't the thing for us, and so we had to change.

Q. What did you see; what effect did it have on the coal? A. It wouldn't work; it would flat-seam it, and it wouldn't get the coal out.

Q. It flat-seamed it? A. Yes; and it wouldn't get the coal squealed out.

6497 Q. What do you mean by "squeal out"? A. It would blow about two or three inches out, just the length of the hole; just blow out the center of it; it was soft natured coal. Of course, it may have been we didn't have quick enough powder; we didn't try any more of it. It was supposed to be the same kind; it was double "F" and single "F."

Q. After you used these lots of Buckeye powder which you have referred to, state whether or not you continued to purchase it for the Crescent Coal Company? A. No.

6498 Q. State why you didn't continue to purchase it for the Crescent Coal Company. A. It wasn't the kind of powder we needed for that mine.

Q. After you purchased the Buckeye powder for use in your mine, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. I never saw any while I was down there; there never was any there.

Q. Why did you wish to use Buckeye powder in the mines of the Crescent Coal Company? A. Why, we were buying it for \$1.10 a keg is the reason we bought it.

Q. Was that more or less than you had been paying? A. We had been paying \$1.25.

Q. After you stopped the purchase of Buckeye powder, will you state whether the powder that

you afterwards purchased you had to pay more or less for than Buckeye powder? A. We had to pay \$1.25 for it.

Q. What powder was that? A. Du Pont.

Q. Had you, prior to the use of the Buckeye powder in the mines of the Crescent Coal Company, ever had any experience with Buckeye powder? A. Before that?

Q. Yes. A. Yes.

Q. In what mine? A. The Applegate and Lewis.

6500

Q. State what that was. A. I used to work for them, and the bookkeeper down there, when the powder went in there, he give me a keg of it and I tried it out, and I went back and told him the other kind was good enough for me.

Q. Did you ever use it in the Applegate and Lewis mine? A. Yes, sir.

Q. State what results you had from the use of that powder in the mine of Applegate and Lewis. A. I didn't have very good results.

Q. In what way? A. It wouldn't work the coal, it wouldn't work the coal out. There was more than me that used it there.

6501

Cross-examination by Mr. Abbott:

Q. Mr. Vonach, how old are you? A. About 32, 33 this April.

Q. When was it that you say you used this Buckeye powder in the Crescent Coal Company mine? A. About 1908.

Q. At that time, you were manager of that mine, were you? A. Yes, sir.

Q. Where had you been working before that? A. At Applegate and Lewis'.

Q. How long were you there? A. About—I think I worked for Applegate and Lewis about six years; I couldn't say right to the day.

6502

Henry Vonach—Cross

Q. Who was the superintendent of Applegate and Lewis' coal mine while you were there? A. There were a good many different ones.

Q. Name some of them. A. Thomas Freer was one, and Tom Bach and a fellow by the name of Stanton; Mr. Stanton was superintendent and Mr. Harper was mine manager.

Q. Was this Crescent Coal Company an incorporated company? A. Yes, sir.

6503

Q. Who were the officers of that company? A. It had changed hands two or three times. The first starting out, I had six shares in it, when it first started; but Henry Vonach, J. C. Appleby, J. S. Vonach—

Q. What position did they hold in that company? A. Mr. Appleby used to be president; my brother was secretary and treasurer, and I was the manager.

Q. You did all the purchasing for the company? A. Yes, sir.

6504

Q. And all of the negotiating, that is, you negotiated with anyone that had anything to sell that you wanted to buy? A. Yes, sir.

Q. You bought, as you say, 20 kegs or 25? A. Twenty-five I think, I wouldn't say how many—it may be more. We bought some before that from the Mackey Coal Company.

Q. Some what? A. Some of this powder, and I got a few kegs of them at first.

Q. What did you get any more for? A. I wanted to have the powder started, if I could; it was a benefit to the company.

Q. After the use of this 25 kegs, you found it was bad, and you didn't want any more? A. Yes.

Q. When did you cease your connection with the Crescent Coal Company? A. I couldn't just say what date, but it was along about 1908, or somewhere like that.

Q. You say this purchase was made in 1908? A. I think so.

Q. What part of the year was it? A. I couldn't say.

Q. How did you know it was 1908, then? A. I don't know; it was along about that time.

Q. When did you quit the mine? A. Which mine?

Q. The Crescent Coal Company's mine. A. I couldn't say just what time it was.

Q. Don't you know whether it was in the spring or fall? A. I think it was in the spring sometime.

6506

Q. Did you leave of your own accord? A. Yes, sir.

Q. You say you were the purchasing agent of the Crescent Coal Company? A. Yes, sir.

Q. Who paid the bills? A. The company paid them, the secretary.

Q. Did you have anything to do with paying the bills? A. No, I wasn't secretary.

Q. You had nothing to do with paying the bills? A. No, sir.

6507

Q. Do you know whether the powder you purchased was paid for? A. I couldn't say.

Q. Who would know about that? A. The Secretary of the company, of course; I had six shares in the company, but I wouldn't say whether they settled for it or not.

Q. Now, don't you know, as a matter of fact, that your company bought not only one order of Buckeye powder, but that you bought a number of orders of Buckeye powder? A. I couldn't say; I think we did buy more than one.

Q. You are going to change now? A. No, I am not going to change—I wouldn't say whether we did; I wouldn't say whether we bought one or 25 or 100.

Q. Then, as a matter of fact, you don't know anything about it, do you? A. I know we bought it and used it.

Q. As a matter of fact, you don't know anything about the facts which you have attempted to testify to here? A. I certainly do; I used this powder.

Q. Don't you know, as a matter of fact, that the powder was satisfactory to you, and you so reported? Not you, but your company? A. No, sir, I don't know that they did.

6509

Q. Don't you know that they continued to buy the powder right along in the mines? A. No; they might after I had left.

Q. Don't you know that your statement, made here in your direct examination, that there was any complaint in the part of the miners is an entirely untrue statement? A. No, I don't know that.

6510

Q. You stated a while ago, in answer to a question put to you by counsel for defendants, that you had never been approached by any agent or representative of the du Pont Powder Company to induce you to abandon Buckeye powder? A. Yes, sir.

Q. Who are the agents or representatives of the du Pont Powder Company whom you have known? A. I have never known any of them.

Q. Have you ever known anybody that has sold du Pont powder? A. I don't know anybody personally, only Dooley Brothers; I suppose they are agents.

Q. Who is their agent? A. I don't know; I used to send in there and get powder and use it; I used to buy powder at the stores in Cuba; but I don't know whether they were agents for the du Ponts or not.

Q. Do you know anybody who went about selling du Pont powder for Dooley Brothers, that ap-

proached you? A. No, nobody ever come to sell me powder.

Q. No one would sell powder to you; you had nothing to do with the business of the company?

A. I certainly did; I had all to do with the business that was done.

Q. You stated on your direct examination here, you testified to two shots, I think, you said you made with Buckeye powder? A. I made a good many more than that.

Q. Tell us about another one. A. But I could never do the work with it that I could with the other.

6512

Q. You have said that a number of times; I want you to tell me about another shot. A. I can't just think of these shots; I made them, and I can make some more of them if you want to see them.

Q. I want you to answer my question. Will you tell me about another shot you made with Buckeye powder? A. I couldn't say; I ain't going to say just what shots I made; I never paid much attention to it at the time; I didn't think I would ever be called—

6513

Q. As a matter of fact, you don't know anything about the shots you made, or how you made them, or the results? A. I know the shots didn't do the work that the other powder did, not only the du Pont, but the other grades of powder.

Q. What other grades? A. Hazard.

Q. Anything that is connected with the du Pont is better? A. I don't know whether it is connected or not.

Q. You stated, in explaining the results of the shots of Buckeye powder, that it might have been that you didn't have powder enough. How about that; what do you say now? A. No, I didn't say it didn't have powder enough in.

6514

Henry Vonach—Cross

Q. You stated that another company had used the powder, and they had told you to use it? A. I could buy it for \$1.10 a keg.

Q. Who was that other company? A. The Mackey Coal Company.

Q. Where is it located? A. I don't think they were incorporated; that is what they call themselves.

6515

Q. What became of the Crescent Coal Company after you left it, if you know? A. Why, it has quit business, I guess, now; I don't know whether it has sold out. The Crescent Coal Company is here in Peoria, ain't it?

Q. When did it go out of business, if you know. A. I couldn't say, not the date.

Q. You said you had some stock in it; have you got that stock yet? A. No. I would have it if there was any of it left.

Q. What has become of it? A. I don't know; it went through.

6516

Q. Didn't you keep track of the company as long as it was in business, as long as you had stock in it? A. No, sir.

Q. You didn't care anything about that? A. No.

Q. It didn't bother you? A. No.

Q. Was the Crescent Coal Company under contract with any corporation or person or association, to buy black blasting powder during the years 1903 to 1909? A. Not to my knowledge, they wasn't.

Q. You bought in the open market? A. Yes, sir.

Q. What did you pay for the du Pont powder you bought? A. \$1.25.

Q. Was there any rebate on that? A. No, sir.

Q. Not at all? A. No.

Q. Of any kind? A. No, sir.

Q. Was that delivered at your mine? A. No, sir.

Q. Where was it delivered? A. It wasn't delivered anywhere; we had to pay freight.

Q. In addition? A. Yes, sir.

Q. Mr. Vonach, I want you to tell me about another shot that you made with Buckeye powder out of that 25 keg lot which you said you used? A. Well, I'll tell you. I was mine manager there, and I didn't have to dig coal; but I went in there, me and another young fellow there, and I said I wanted to try this, and we put a few shots and—

Q. Tell me about a third shot. A. All I know, they didn't always flat out; sometimes they would kick back; I ain't saying that it won't work in some coal, but it wouldn't work that, on account of being a soft-natured coal. 6518

Q. Tell me of a good shot. A. I couldn't tell you that.

Q. Tell me one that wasn't a failure. A. You don't always have good shots; it don't matter what kind of powder you get, you will have good ones and bad ones.

Q. That applies to any grade of powder? A. Yes, sir; that's according to the way the shots were made; I could show you if I were in the mine. 6519

Q. Does a shot with any kind of powder have to be drilled in a certain way? A. Certainly.

Q. And loaded in a certain way? A. Certainly.

Q. And tamped in a certain way in order to get the results from any powder? A. Yes.

Q. As I understand you, you have told of two shots you made with Buckeye powder, and say they didn't make good shots? A. I can show you, if you want to see them; I can't recollect right here; I ain't going to say how many I fired; I fired a good deal; more than two or three shots, though; not only there, but in other mines.

Q. I am asking you to tell me of the third shot

6520

Isaac Walting—Direct

that you fired with Buckeye powder out of that 25 kegs you said you used. A. If I don't recollect it, I can't tell you.

Q. Then, how do you know you made any more than just two? A. I know we did.

Q. How do you recall the result of those two shots, while you don't remember the third? A. Couldn't you recollect it if you went in to try it?

Q. I ask you to recollect a third one. A. I ain't paid to come here; I was just fetched here.

6521

Q. Who fetched you? A. Mr. Larrimore came and got me.

Q. Who is he? A. I don't know; I never saw him until a week ago Saturday.

Q. Who does he represent himself to be? A. I don't know; he's a traveling man, I guess, for a powder company; I couldn't say; I don't know anything about him.

Q. You just allowed him to get you and bring you here? A. He got me and told me to be here.

6522

Q. Did you talk over with him the matter of these shots you have made? A. No.

Q. That's all you know about the transaction? A. Yes. I went to—

Q. That's all you know about the Buckeye powder you say you had in the Crescent Coal Company mine? A. That's all I know; I won't say it ain't good powder.

Deposition of ISAAC WALTING, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Walting, where do you reside? A. In Peoria.

Q. How long have you lived in Peoria? A. I think about 27 years.

Q. What has been your occupation during your life? A. Well, I have always been in the mining business ever since I was a boy.

Q. Have you been in the mining business as a practical miner, or as the owner of mines? A. Both.

Q. At what age did you get an acquaintance with practical mining; how old were you when you commenced? A. About six years old.

Q. State how long you worked in a mine as a practical miner, and what you did. A. Well, I worked the same as all boys work, until I was a man—

6524

Q. What line of work did you do? A. From mule driving and trapping, and what is general for boys to do.

Q. When you were a man, what did you do as a practical miner? A. The same as miners do now.

Q. What is that? Tell us yourself what steps a miner takes to get out coal, and what you did when you were a miner. A. I done so many things.

6525

Q. Just state them; state what you did. A. Well, I was in the old country and did boys' work until a man, and then I did what we call pick work there, that is, practical mining, until I was a man; and then, at about 20, I commenced over there as an operator for what we call them, chaunter masters, over in England.

Q. When did you come to this country? A. In '66.

Q. And after you came to this country, what part of the country did you come to? A. Right to this town.

Q. Since you have lived in Peoria, have you worked as a practical miner? A. Yes, sir.

Q. In the coal fields about Peoria? A. Yes.

6526

Isaac Walting—Direct

Q. As a practical miner, did you use black blasting powder in mining operations? A. Yes, sir.

Q. State just how black blasting powder is used in coal mining operations, if used. A. Black blasting powder is used in coal mining in this district and most of it—you drill holes in the face of the coal and put in your blast and blow it out; in some mines, of course, they undermine the coal and put the hole over the coal and blow it down.

6527

Q. And since you have been in Peoria, have you been an owner and operator of mines? A. I have been an operator of mines ever since about '70.

Q. Between the years 1903 and 1909, were you engaged in the coal mining business? A. Yes, sir.

Q. State what mines you were operating between those years. A. One at Pottstown, this county, and one at Edwards, this county, and one at Elmwood.

Q. In these mines you have mentioned as being operated by you, you used black blasting powder? A. Yes, sir.

6528

Q. Between the years 1903 and 1909, did you purchase for your mining operations any powder made by the Buckeye Powder Company and known as Buckeye powder? A. I think we used some.

Q. Do you recall in what mines you used the powder? A. I think we used some at Pottstown, and I think we used some at Edwards and at Elmwood.

Q. Prior to the use of the Buckeye powder, what powder had you been using? A. We used du Pont and Laffin and Rand, and several grades that I couldn't remember now; I guess I used to use a great deal of King's and Great Western powder; but that is before those dates.

Q. What were the reasons why you purchased Buckeye powder? A. Well, I expect, at least, I presume the reason I changed was, because the mills

were close to the works and we got the powder a little cheaper than we were getting it.

Q. Do you know how long the Buckeye Powder Company continued to manufacture powder? A. I do not, that is, I don't remember.

Q. Do you recall about the date of your first purchase of Buckeye powder? A. I could not.

Q. Could you approximate it? A. It was between those dates, between 1903 and 1907, but the particular date I cannot remember.

Q. After you purchased powder of the Buckeye Powder Company, did you ascertain, by examination, the results of the use of Buckeye powder in your mines? A. We changed very often our powder from different dealers,—what suited the miners; we got powder what suited the miners.

6530

Q. After you purchased powder of the Buckeye Powder Company, could you state whether or not you had any conversation with any agent or officer of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder. A. Not that I know of.

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Q. Before you purchased the Buckeye powder of the Buckeye Powder Company, did you have any conversations or communications with any agent or officer of the E. I. du Pont de Nemours Powder Company, or the company known as the du Pont Company, with reference to Buckeye powder? A. No, I think not.

Q. Did you, or did you not continue, after the purchase of powder of the Buckeye Powder Company to purchase the products of the Buckeye Powder Company? A. No, sir.

Q. State what facts you have, of your own knowledge, as to the reasons why you ceased the purchase of Buckeye powder. A. As a rule, we have to try to suit the miners; powder that suits the

miners right along, we never care to change; but always, in trying a new grade of powder, there is reports comes from the men whether they can do the work better or dig more coal with it or not so much, and we are governed in our choice in that way; and the reason we didn't continue with any firm any length of time, was to suit the miners; complaints would come sometimes, both of the Buckeye and other grades we used, and we always tried to suit the miners. I have handled a good deal of powder in my time between 70 and 80 years, I guess; I was one of the greatest shippers in the county; they were not as large then as now, of course.

6533

Q. In your mines, between the years 1903 and 1909, how many tons of coal would you mine a year? A. Well, I can't hardly tell you that; your State statistics will show you more accurately than I can, if you will look them up.

Q. Approximately? A. All the way from forty to fifty thousand tons.

6534

Q. State whether or not there were any complaints made by miners to you of the Buckeye powder? A. I think I have already answered that, when I said that the complaints of the miners,—because we used to change to different kinds of powder—

Q. Did that apply to Buckeye powder as well? A. Yes, sir.

Q. When you received complaints as to powder, did you, between the years 1903 and 1909, ascertain or not, whether those complaints were well founded? A. Yes.

Q. In what manner would you determine whether the complaints were well founded or not? A. By the miners' bulletin,—by the amount of coal he could dig, was, as a rule, what governed me, to ascertain whether there was truth in the complaint.

For instance, a car of powder, a man in Number 5 in this district, will dig on an average so many tons to the keg of powder, and that was the only way that we had to find whether their complaints were correct; if we started on a new grade of powder, the miners didn't like it, and they sometimes say cuss words, you know, and we would look at the average what they were producing, and if it was falling off from what they were digging with the other powder, there was grounds to make a change; not always the price, but to satisfy the miners. It was to our advantage to have a powder that the miner could dig a fair day's work.

6536

Q. Did you or did you not, investigate the complaints of the miners with reference to Buckeye powder? A. I think we have.

Q. State what you discovered as to the truth or falseness of the complaint of the miners with reference to Buckeye powder. A. Well, sometimes we have had complaints—

Q. Well, when you investigated those complaints, did you find them true or false? A. We found them, as a rule, true.

6537

Q. In coal mining operations, does the operator or the miner pay for the powder used? A. The miner pays for the powder so much per keg.

Q. From whom does he purchase it? A. From the operator.

Q. Was that so in the conduct of your mines? A. Sure.

Q. Mr. Walting, were you the I. Walting of I. Walting and Son, having mines at Edwards, Illinois? A. Am I him?

Q. Were you the Mr. Walting of Walting and Burdick, of Pottstown, Illinois? A. No, sir; that was a nephew of mine; I owned the land.

Q. Are you the I. Walting of I. Walting and

6538

Isaac Walting—Direct

Company, of Peoria, Illinois? A. Yes, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company as defendants, the plaintiff, in answer to a bill of particulars has given the name of I. Walting and Company, of Peoria, Illinois, and I. Walting and Son, of Edwards, Illinois, as customers of the plaintiff which were induced by the defendants, and also by the following companies and persons, namely: E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not, you were induced by any of the defendants, corporations or persons I have named, or their agents or representatives, to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed). A. You want me to answer whether I was induced to cease purchasing from the Buckeye?

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Q. Yes. A. No, not by any one.

Cross-examination by Mr. Abbott:

Q. Mr. Walting, you have just answered the last question stated by counsel, by stating in a general way that you were not induced by anybody?
A. Yes, sir.

Q. You previously stated in your examination, that you were always influenced to make choice in the kind of powder that you used by the demand or request of the representatives of the miners and price?
A. And price?

6542

Q. I believe that is what you stated?
A. Yes, I believe it is what I stated.

Q. How do you know that some of these miners and others were not agents and representatives of the parties whose names were read to you a moment ago by counsel?
A. How do I know?

Q. Yes.
A. I don't know.

Q. You don't know that?
A. No.

Q. Then, your answer to the question about which I am now interrogating you, would not be accurate, would it?
A. Well, I think I have already stated that there is no one that could influence me to buy other powder if I had powder that suited me, unless there was a price that would get me to try it; then it would depend upon whether it suited me, no matter what the price was, if it didn't suit me I wouldn't have it. But in regard to the du Pont and Buckeye asking me to use powder, I emphatically say that I have not been approached by any of those firms that were read to me.

6543

Q. And in so many words asked you to cease purchasing—
A. No one has asked me to cease purchasing from other parties.

Q. You have also stated that you took reports from your miners and acted upon those reports yourself, to know just how the powder was shot or handled, and what the results were per shot pro-

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6544

Isaac Walting—Cross

duced by miners with the various grades of powder, whether it was du Pont or Buckeye or other powder, as I understood you? A. Only by looking at the bulletin.

Q. You simply took the bulletin reports? A. Yes, sir.

Q. Who made up those bulletin reports? A. The weigh master.

6545

Q. And from whom did he get the data? A. He weighs the coal and puts every day's coal down on the bulletin.

Q. Who loaded the coal and furnished the information upon which he made his report? A. Each miner works by a number and puts his coal under that number; his coal is weighed and put on the daily bulletin.

6546

Q. Now, if a miner, for any reason of his own, desired to use some other kind of powder than the kind of powder which he was using, couldn't he load a less amount of coal, or couldn't he fire it in a different way so as to produce a different result? A. He could; he could touch it off and burn it in the woods if he wanted to; we have no prescribed way of drilling a hole; sometimes we hear of an exception; you could burn it up out in the open, if you wanted to.

Q. Isn't it a fact, that the method of boring holes and loading them and firing them, has a great deal to do with the amount of coal produced from a given shot? A. Everything.

Q. And isn't it a fact that there is a vast difference of opinion between miners as to what is the best method of leading and firing? A. Certainly, there is a difference of opinion.

Q. Is it not a fact, that there is often a very mistaken judgment on the part of miners as to the best method? A. Yes, sir.

Q. In other words, as I understand it, you made no investigation of the method used by the miners either in boring their holes or in loading their shots and firing them, or in the way in which they loaded the coal into the cars and delivered the same to your weigh master,—you made no investigation of that yourself? A. No; when we gave a miner a job, we supposed he was a miner, and we furnished the powder and he digs his coal; all we know then is, the superintendent of the pit boos, as we call him, furnishes him his room and he digs the coal to satisfy himself.

6548

Q. Then, the quantity of coal produced by any miner is absolutely under his control, according to the system you have just testified to? A. Yes, sir.

Q. Now, you stated in your direct examination, that you based your judgment, from time to time, upon the averages which were shown to have been produced by the various grades of powder as to which was the most effective in its results; is that correct? A. Yes, sir.

Q. How did you obtain that average; upon what did you obtain your information? A. By the daily bulletin. If a man is running No. 1, we will say, loads the buggy, puts his number on, the weigh master weighs it, and it is on the bulletin. If he sends out five or six in one day, it is under the number he is running by. Then it is the weigh master's duty to figure up at night what that man has got.

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Q. Have you in your possession or under your control, the various reports or statements of averages which were thus obtained by your weigh master regarding the coal as produced by the various grades of powder which you have testified you used? A. If I have those reports in my possession now?

6550

Isaac Walting—Cross

Q. Yes. A. I couldn't say whether I have or not.

Q. Upon what do you base your testimony here to-day, to the effect that there was a variation in the averages in favor of other grades of powder as against the Buckeye? A. I have already stated—

Q. I am asking you what data— A. By the average of the coal—

Q. But where is the data? A. If a man—

6551

Q. No, no; I want an answer to my question. I want you to tell me where the information is upon which you base your testimony to-day concerning the average amount of coal produced by the various grades of powder which you testified you used during this period from 1903 to 1909; you said you used Buckeye powder and du Pont powder and Laflin and Rand powder, and you testified that Buckeye didn't produce as good results as those. I want to know where that information is, not what your recollection is. A. The information may be burned up, so far as I know; but the mode of ascertaining, I have already explained.

6552

Q. I am trying to find out where that information is now; is it burned up? A. I don't know.

Q. Then, where is it? A. I don't know.

Q. Where was it? A. On the bulletins.

Q. And where are those bulletins? A. Probably destroyed; I have been out of the business now for—

Q. Why do you say that they are probably destroyed? A. I am out of the business now; because I am out of the business.

Q. Who destroyed them? A. I expect some of my children, or some other people; I don't know.

Q. Did you destroy them yourself? A. Not that I know of.

Q. Now, so far as you know, they are in existence, however? A. I don't know that; I have some of the

stuff in storage that I am paying storage on, that I have moved in the last two months.

Q. Might they be among those papers? A. They might be.

Q. How much coal in tons was produced by a keg of Buckeye powder? A. Well, that I can't remember.

Q. You can't remember it at all? A. No.

Q. Have you any records or other data that would furnish you that information? A. I don't know that I have.

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Q. Do you know that you have not? A. I say, I don't know that I have.

Q. Do you know that you have not? A. I don't.

Q. If you did have, where would it be? A. That I can hardly tell you; it might be among the stuff that is stored, and it might not; there has been any amount burned up, and you get a lot of stuff, you know, around for a year or two, and still it is all passed; and then, the bulletins, they don't amount to anything—it's the time you are doing business that you want them.

6555

Q. Mr. Walting, how much coal was produced by your miners from a keg of du Pont powder? A. That I could hardly tell you.

Q. How much coal was produced by your miners from a keg of Laffin and Rand powder? A. I couldn't hardly tell you. I can tell you this: years ago, miners would take more coal to a keg of powder than they will to-day.

Q. How does that statement apply to the years 1903 to 1909? A. It will apply right through, and increase with the carelessness on the part of the miner from what they used to do; they used to undermine the coal part way to save the powder, and then give it, what we call an advantage; now, they place it all together off the solid, and

try to bring more out than it has a chance to bring.

Q. As I understand you, then, you are testifying regarding the results that were obtained by the various grades of powder, entirely upon your recollections, aren't you? A. Yes, sir.

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Q. You have no information of any kind, other than simply your recollection, upon which to base your present judgment? A. I have not. The way I have been called upon, without any preparation or any search.

Q. You have no facts upon which to base your recollection at all, in your possession? A. Only facts from what I have already stated, in figuring up the bulletin in giving me a guide.

Q. How long is it since you have taken one of those bulletins up and looked it over? A. I don't know that I have seen a bulletin for a year; I have been out of the coal business for a year.

6558

Q. How long since you have seen one of those bulletins—when you saw the average reports of the difference between Buckeye and du Pont and Laflin and Rand? A. I can't say.

Q. Can't you state at all? A. No.

Q. You know that you used this powder? A. I have a faint recollection that I used powder—

Q. What kind of powder? A. I know I have used Buckeye and the du Pont, and the Laflin and Rand, and Austin, and different grades, as I have already said.

Q. And your recollection as to the comparative results between those powders, is purely a matter of recollection? A. Yes, sir.

Q. Now, did you testify on your direct examination definitely when you began buying Buckeye powder? A. No, sir.

Q. Are you able now to testify to that? A. No, sir.

Q. Did you testify when you ceased buying Buckeye powder? A. No, sir.

Q. Do you know how much Buckeye powder you bought? A. No, sir.

Q. Do you know how many different orders you placed for it? A. No, sir.

Q. Do you know over what period of months or years you bought it? A. I don't know.

Q. As a matter of fact, do you recollect anything about the purchase of Buckeye powder or the use of Buckeye powder? A. Yes, sir.

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Q. State then, definitely now, what you recollect about the purchase of Buckeye powder, and all that you recollect as to the dates and amounts and price of it. A. I can't do that.

Q. State then, definitely, just what you can recall regarding the purchase of Buckeye powder? A. I know after the Buckeye mills were erected there, that the Buckeye Powder Company wanted to put powder wherever they could put it, and, as a matter of fact, so does every other company, every mill does that. Being close to their district, we wanted to stimulate and to help an industry at home, and purchase some powder from the Buckeye.

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Q. When was that? A. I can't tell you.

Q. Were you a purchasing agent of the various mines which you owned at that time? A. I always did the purchasing for the firms mentioned.

Q. Have you any books of account or records showing the amount of purchases you made? A. I had up to the time I moved here three months ago. I lived in one place for 27 years, and I moved about two or three months ago down here on Main Street; I have some stuff in storage, and some was destroyed: we destroyed some magazines, papers and books that I thought I was through with; I may have some left and I may not.

6562

Isaac Walting—Cross

Q. Have you any particular recollection as to the amount of powder used by you at the Pottstown mine? A. I have not.

Q. Or at the Edwards mine? A. I can't tell you the amount.

Q. Or at the Elmwood mine? A. I can't tell you the amount.

Q. Do you know, as a matter of fact, that you used Buckeye powder at all of those mines? A. Well, I am not positive on that.

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Q. Then, did you use Buckeye powder at the Pottstown mine? A. I think so, but I am not positive.

Q. Did you use Buckeye powder at the Edwards mine? A. I think we did.

Q. Do you know that? A. Well, I feel sure that we did.

Q. Now, do you know whether you used Buckeye powder at the Elmwood mine? A. What time did the Buckeye cease manufacturing?

Q. I shall have to leave that to you? A. Well, I think we did, but I wouldn't be positive on that point. You see, I am trying to get all these out of my mind; I haven't kept any track of it.

6564

Q. Now, can you recall any specific objection that was made by anyone who used Buckeye powder at either one of your mines, and if so, which one, and who was it that made the objection, and the date? A. I can't give you that; I told you all that I can remember; those dates—

Q. You testified on your direct examination, that it was absolutely necessary on the part of the coal operator, that he comply with the demands of the miners with reference to the kind of powder which he used? A. I don't think I used that term "absolutely."

Q. You said you had to suit the miners? A. I

said, if I remember right, that we tried to suit the miners, to satisfy the miners.

Q. And you found it necessary to comply with his request? A. Not altogether in that way. I tried to suit him, but price governed some, so that we were willing to make a test.

Q. Do you know what price you paid for Buckeye powder at any time? A. I couldn't truthfully state, but as near as I can recollect, the prices ran from 90 cents to \$1.10, and \$1.15, and varied.

Q. Where did you get that information from? A. 6566
In my mind.

Q. Just in your mind? A. Just in my mind.

Q. Are you willing to testify that you ever bought as low as 90 cents, Buckeye powder; did you ever pay as low as that for Buckeye; are you willing to testify to that? A. No.

Q. Are you willing to say that you ever paid as much as \$1.10 for Buckeye? A. I am willing, I think, to state that.

Q. You are willing to state that? A. Yes, sir.

Q. How much powder did you buy of the Buck- 6567
eye Powder Company at 90 cents? A. I don't know that we ever bought any.

Q. Are you willing to state at this time, whether the price you paid for Buckeye powder was F. O. B. mills or delivered at your mines? A. I don't think that I could say whether it was delivered price or price at the mill.

Q. Can you state at this time, what price you paid for du Pont powder? A. I cannot.

Q. Either the highest or the lowest? A. I can't.

Q. Can you state what conversations you had with the du Pont Company, or any of its representatives? A. No.

Q. Can you give us any of the freights? A. No.

Q. Can you state what price you paid for Lafin and Rand powder? A. I could not.

Q. How is it that you happen to know the price you paid for Buckeye powder, and can't remember the price of other powders? A. Because it is riveted in my mind; I have paid from 90 cents up.

Q. You say you did buy it at 90 cents? A. I know I have, but I don't know what firm.

Q. And you bought Buckeye powder at 90 cents? A. I don't know that.

Q. You don't know what you paid for Laffin and Rand or du Pont or Buckeye? A. No, but I got some powder at that price.

Q. Now, as I understand you, after all the controlling factor in your mind in the use of the various grades of powder, Buckeye, du Pont and Laffin and Rand, was one of price, is that right? A. Was what?

Q. One of price; that was the controlling factor? A. That and the suiting of the miners.

Q. Which ground are you willing to stand on; you have said, and already gone on record, that you didn't observe the ground that the miners wanted it; which do you want to say, that it was because the miners wanted it that you were governed finally, or on account of the price? A. I beg your pardon; I didn't say that.

Q. State it as you think you already said it. A. I said—well, if the price showed was better than the other price, and we thought it was better to try the powder, we would try it, and if it gave satisfaction to the miners, we would go ahead; if it didn't, we were governed by their bulletins and their complaints, to make the change again.

Q. Now, that being so, can you state now positively what was the moving factor in your change at any time from du Pont powder or Laffin and Rand powder to Buckeye powder? A. No, I can't state positively, only as I have already stated, to assist the mill that was in our own district.

Isaac Walting—Redirect
Warren Pye—Direct

6571

Q. You are constantly giving new grounds for your change. First, it was because of the demand of the miners, then on account of the price, and then it was a question of your bulletin reports, and now it is to favor the Buckeye Powder Company because it was a local company. Now, which ground do you want to stand on?

Re-direct examination by Mr. Katzenbach:

6572

Q. Between the years 1903 and 1909, were miners paid by the number of hours that they worked, or by the number of tons of coal mined? A. The miner proper was paid by the number of tons produced.

Deposition of WARREN PYE, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

6573

Q. Mr. Pye, where do you live? A. In Peoria.

Q. How long have you lived here? A. I was born in Peoria County; I have lived here 49 years.

Q. During the years 1904, '05, '06 and '07, what business were you engaged in? A. I was in the mining business. General Manager of the Collier Co-operative Coal Company.

Q. Where were the mines of that company located? A. They were situated at South Barden-ville, at Limestone County, Illinois.

Q. What is the distance from Peoria? A. I should judge four or five miles.

Q. You stated that the company was a co-operative company; will you explain what you mean? A.

A co-operative company each member had stock in the company that mined there; there were 31 of us, and each one mined coal, all but one, that was elected General Manager, and then we hired the day hands.

Q. Who was elected General Manager? A. I was.

Q. As General Manager, did you have occasion to purchase the black blasting powder used in the mine? A. I bought all the supplies, and collected and paid out all moneys.

Q. Was the mine one in which black blasting powder was used? A. Yes, sir.

Q. And you made the purchases? A. Yes.

Q. What powder were you using in the early part of 1906? A. Du Pont powder.

Q. Did you use any other powder in the mines? A. Yes.

Q. What powder did you use? A. We used Buckeye powder. The agent came down there one day, and persuaded me to try 100 kegs—I think it was Jones—and I took the 100 kegs off him for trial.

Q. Why did you purchase of the Buckeye Powder Company? A. Well, they sold it to us 5 cents a keg cheaper.

Q. What was the price that you paid the Buckeye Powder Company per keg? A. 95 cents, delivered at the mine.

Q. What had you been paying the du Pont Company, just prior to that? A. One dollar.

Q. Do you know or not, whether the 100 kegs that you purchased of the Buckeye Powder Company were delivered at your mine? A. Yes, sir.

Q. Do you know or not, when it was delivered at your mine, whether it was used in your coal mining operations? A. Yes, sir, it was.

Q. Did your duties as Manager take you down into the mines at times? A. Oh, yes.

Q. What experience have you had in mining, and for how many years? A. I mined coal for twenty years.

Q. State, in the mining of coal, just exactly what you have done as a miner? A. Well, I have done it all.

Q. State what "all" is. A. I went in and blasted coal and loaded it in the cars, and checked it and sent it outside.

Q. Prior to the blasting of coal, what did you do? A. Why, you drill the hole in the first place, and prepare your blast.

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Q. State how you prepare that. A. Putting in the blasting powder and tamping the hole up with slack or any other rough stuff lying around in the mines.

Q. And after that, what? A. You either fire it with a squib or a fuse; the squibs are not used a great deal any more, but at that time they used squibs altogether.

Q. State whether or not you saw the effect of any shots fired with Buckeye powder in the mines of the Co-operative Coal Company? A. I saw some of the shots that had been fired.

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Q. Will you state now, how the shots fired with the Buckeye powder compared with the shots fired with du Pont powder, as to the tonnage produced. A. Why, I simply took the men's word for that; they told me they had put so much powder in the hole, and that it hadn't done anything. I relied principally upon the men; they were all members of the company, and the men said they would not use it, and told me not to get any more.

Q. After you made this purchase of 100 kegs of powder, state whether or not you continued to purchase of the Buckeye Powder Company? A. No, sir.

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Warren Pye—Cross

Q. Why did you not purchase of the Buckeye Powder Company? A. Because the men were not satisfied to use it.

Q. After you had made this purchase of 100 kegs of Buckeye powder, did you have any conversation or communication with any agent or representative of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, I don't remember that I did.

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Q. After you made this purchase of Buckeye powder, of what company did you subsequently purchase powder? A. The du Pont.

Q. State whether you purchased at a higher or lower price than you purchased Buckeye powder of the Buckeye Powder Company?

A. I paid more for the du Pont powder than I did for the Buckeye powder.

Q. That was after you had purchased the Buckeye powder, that you paid more for du Pont? A. Yes, sir; I never purchase du Pont as cheap as Buckeye.

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Q. Mr. Pye, in a suit in the United States District Court for the District of New Jersey, brought by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, in answer to a demand for a bill of particulars as to the customers of the Buckeye Powder Company which were induced to cease purchasing powder from the Buckeye Powder Company, it is alleged in said suit and stated that the Collier Co-Operative Coal Company had been induced to cease purchasing powder from the Buckeye Powder Company by either the E. I. du Pont de Nemours Powder Company or the following persons and corporations, or the agents or representatives of those persons or corporations,

which I will now read to you: The International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laffin and Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell; will you state whether or not anyone or more or all of these persons or corporations, or any agents or representatives of them, ever induced the Collier Co-Operative Coal Company, through you, as Manager, to cease the purchase of Buckeye powder? (Objection overruled, exception allowed.) A. No, sir.

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Cross-examination by Mr. Abbott:

Q. Now, Mr. Pye, when did you first become the General Manager of the Collier Co-Operative Coal Company? A. About 1901, I think it was.

Q. When did you cease to be such General Manager? A. In 1910; I was there about nine years.

Q. During all those years were you the purchasing agent? A. Yes.

Q. The exclusive purchasing agent? A. Yes, sir, bought and sold all supplies, and sold the coal, and collected all moneys, and made up the pay-rolls, and paid the men off, and kept the books myself.

Q. After this experience which you have just testified to, with the Buckeye powder, I understand you to say you began to purchase du Pont powder?

A. I purchased it before.

Q. You ceased buying the Buckeye powder? A. Yes; we took that 100 kegs on trial, and, of course, if it gave satisfaction, we would buy it.

Q. Do you remember the date you bought that powder? A. I think it was in 1906; I think it was December, 1906, and I paid for it the following
6587 January; we paid for the powder the next year; I couldn't be positive, but I think that is the date, as near as my recollection is.

Q. Of whom did you buy your du Pont powder?

A. We bought it off Dooley Brothers; I had bought it off Charlie Off before.

Q. Who was Charlie Off? A. He ran a wholesale grocery store on Washington Street; C. J. Off and Company; they had the agency for du Pont powder at that time, but the reason I quit him, I could trade some coal in with the Dooleys, whereas,
6588 I has to pay the cash to Off.

Q. What was the total amount of powder you used per year? A. Well, we used in the neighborhood of 3,000 kegs.

Q. 3,000 kegs? A. Yes; from 2,500 to 3,000 kegs.

Q. You stated you paid more for du Pont powder than for Buckeye? A. Yes, sir.

Q. How much more? A. Five cents per keg, at that time.

Q. Do you remember when you began buying the du Pont powder? A. They were buying du Pont powder before I was elected as Manager.

Q. Before 1901? A. Yes, sir.

Q. Were you under contract to buy du Pont powder? A. We made a contract with them.

Q. With whom did your contract run? A. The

E. I. du Pont Powder Company through their agent.

Q. Do you remember when your first contract was dated? A. No; I don't think I can remember exactly; I think the contracts ran for three years at a time.

Q. When was your first contract made? A. I don't remember exactly when it was. The contract was made, though, before I was elected Manager.

Q. That same contract was renewed as it expired? A. Yes.

Q. And renewed down to what time? A. To the time I quit. 6590

Q. Have you got any of those contracts? A. No.

Q. Where are they? A. I couldn't tell you; of course, when I turned the books over, there was a new contract made and these old contracts, they didn't keep them.

Q. You have no knowledge at the present time, where they are? A. No.

Q. You haven't any copies of them yourself?

Q. What became of your company, if you know?
A. The company is in existence; I simply sold my stock. 6591

Q. How do you spell the name of your company?
A. C-o-l-l-i-e-r.

Q. Do you remember what you paid the du Pont people under the contract? A. At the time when I purchased the powder from the Buckeye Powder Company?

Q. No, at any time? A. Oh, well, the prices varied some; I couldn't tell you that.

Q. I ask you then, if you can specify the price you paid the du Pont people at the time you purchased of the Buckeye Powder Company? A. Yes, sir.

O. State it. A. \$1.00 a keg, and I bought the powder from the Buckeye Powder Company for 95 cents.

6592

Warren Pye—Cross

Q. Is your company a member of the Coal Operators' Association of the State of Illinois? A. No, sir.

Q. Are the miners which compose the Co-operative membership of your company, members of the Miners' Union? A. No, sir.

Q. In other words, you didn't belong to the Union miners of the State? A. No; they were really mine operators, they were stockholders.

6593 Q. Do you remember whether the contracts which you had with the du Pont Company provided for any rebates? A. No, not that contract didn't.

Q. There were no rebates provided? A. No.

Q. Simply a straight price of \$1.10? A. Yes, sir; nothing to it.

Q. Was it not a violation of your contract with the du Pont Company, to make any purchases at all of the Buckeye Powder Company, while you were under contract with the du Pont? A. I suppose it would have been; we didn't say anything to them about it.

6594 Q. Mr. Pye, my mind seems to be pretty clear upon what you have testified to regarding the number of kegs and the times you bought the powder; but I would like to have you state again, if you will, please, about the time you bought this 100 kegs of powder you bought of the Buckeye Powder Company. A. My recollection is, that it was December, 1906.

Q. And that was the only order of Buckeye powder that you bought? A. That was the only order that amounted to anything. My recollection is, that we tried a few kegs before that, but I wouldn't be positive.

Q. How many? A. That is out of my recollection; I think it was eight or ten kegs; I got it from another mine.

Q. When was that? A. I wouldn't say when it was; my memory is not exactly clear on that.

Deposition of JACOB GIEBELHAUSEN, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

6596

Q. Mr. Giebelhausen, where do you live? A. East Peoria.

Q. How long have you lived there? A. Since I was five years old; I would have to figure that up,—going on 23 years.

Q. During the time you have lived at East Peoria, what business have you been engaged in? A. Coal mining.

Q. How long have you been engaged in the coal mining business? A. 12 years.

Q. Do you operate any mines? A. My father.

Q. You are a partner with your father? A. Yes.

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Q. Whereabouts are your mines located? A. Coal Hollow, East Peoria.

Q. Have you ever worked in a mine? A. Yes, sir.

Q. How long have you worked in a mine? A. Well, inside, five years.

Q. What did you do? A. From mule driver to manager.

Q. Did you ever have any experience with getting out coal yourself? A. Well, I was around them all the time.

Q. You say you were around them all the time? A. Yes, sir.

Q. Did you ever assist in drilling the holes? A. Yes, sir.

6598

Jacob Giebelhausen—Direct

Q. State what you have done as a miner, with reference to the use of powder. A. Why, I went in many a time and showed the men how to drill holes, which way, and I helped to drill, and also I was a good judge of the amount of powder to use in a shot; in fact, I have charged many a shot for the miners.

Q. How do you charge a shot? A. Well, when I was down we used to needle and square; of course, we made up a cartridge then.

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Q. State exactly what you have done, from the drilling of the hole up to the firing of the shot; state everything you have done in a mine. A. I have practically done everything; everything that can be done.

Q. What can be done? A. Set the machine drilling the hole; of course, you must use your judgment how you are going to drill it, and measure your shot and find out how much powder you must use.

6600

Q. Where do you put the powder? A. In the hole.

Q. Then, what do you do? A. Tamp it.

Q. Then, what is the next process? A. Draw the needle, and then the squib, and then light it, and then beat it.

Q. What do you mean? A. What?

Q. What do you mean by "beat" it? A. Get out of there.

Q. Do you recall whether, in your mine, you have used a powder known as Buckeye powder? A. Yes, sir.

Q. Who purchased that powder? A. I did.

Q. From whom did you purchase it? A. From the Buckeye Powder Company.

Q. Do you recall the time of the purchase, what year it was? A. I have an idea what year it was.

Q. What year? A. 1905.

Q. What were your duties in the mines that you and your father operated during the year 1905? A. Manager.

Q. Will you state what experience you had with the use of the Buckeye Powder in your mine? A. It seems as though it was not strong enough, it would not cut the coal; it would cut it, but it wouldn't push it down. The miners had to mine every shot.

Q. What do you mean by that? A. It was just like a solid chunk, and they had to either re-cut it and then wedge it down, or—

Q. Do you recall how many kegs of Buckeye powder you purchased? A. Twenty.

Q. State whether or not all of this 20 kegs were used in your mines? A. No, sir, it wasn't all used.

Q. It was not? A. No.

Q. How many kegs of the 20 were used? A. Sixteen.

Q. What was done with the remaining four kegs? A. Returned.

Q. To whom? A. To the Buckeye Powder Company.

Q. Why did you return it? A. The miners would not use it.

Q. Why wouldn't the miners use it? A. Because they couldn't get the tonnage.

Q. How were the miners paid in your mine? A. By the ton.

Q. When you say the miners couldn't get the tonnage with Buckeye powder, what do you mean? A. Why, they couldn't get out as much as they did with other powder.

Q. What other powder do you refer to? A. Du Pont.

Q. After you returned the four kegs of Buck-

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Jacob Giebelhausen—Direct

eye powder, did you afterwards make any purchases of Buckeye powder? A. Of Buckeye?

Q. Buckeye. A. I am not positive; I think not.

Q. I think you stated that you personally purchased the du Pont powder, did you not? A. Yes, sir.

Q. Personally? A. Yes.

Q. Do you recall the price you paid for the Buckeye powder? A. Yes.

6605

Q. What was it? A. The first batch was \$1.15, and the second was \$1.10.

Q. What powder had you been using prior to this purchase of Buckeye? A. Du Pont.

Q. Will you state which was the higher in price, Buckeye powder or du Pont powder? A. The du Pont.

Q. Do you know what you paid for du Pont powder? A. Yes, sir.

Q. What did you pay? A. \$1.35.

Q. After you ceased the purchase of powder of the Buckeye Powder Company, what powder did you purchase? A. Du Pont.

6606

Q. Was the du Pont powder that you purchased after you ceased purchasing powder of the Buckeye Powder Company, more or less in price than Buckeye powder?

Q. After you purchased powder of the Buckeye Powder Company, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. Not that I can recall.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are de-

fendants, in answer to a demand for the names and addresses of the customers of the Buckeye Powder Company which were induced by the defendant companies which I have named, to cease the purchase of powder, or abandon the purchase of powder of the Buckeye Powder Company, the name of your firm was given. Will state whether or not these defendants that I have named, ever induced your firm to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. No, sir.

6608

Q. How do happen to remember so definitely dates when you made purchases of Buckeye powder and other dates which you have testified to?

A. I surely ought to know that,—the year—

Q. You can remember dates? A. The year.

Q. You can remember dates pretty well, can you?

A. Not actual dates of the month, but the year, I remember that.

Q. How do you happen to remember the exact amount of kegs you purchased and the amount you paid for? A. I don't know, just because I remember it.

6609

Q. Do you remember what you paid for du Pont powder at that time? A. \$1.35, yes.

Q. During what year was it that you paid \$1.35 for du Pont powder? A. I think it was a little while before that; well, I bought the Buckeye in 1905.

Q. In order to be more definite was it during the years 1903 to 1909? A. No, afterwards, we told Dooley Brothers we could get powder cheaper.

Q. What do you mean by "afterwards"? A. While we were buying it from the Western Powder Company or the Buckeye Powder Company.

Q. Tell me when you began buying du Pont Powder, and when you ceased. A. That I can't recall; that is too far back.

6610

Jacob Giebelhausen—Direct

Q. Can you remember when you ceased buying du Pont powder? A. I am still using it; I have used it all the while, while I was using Buckeye; I was giving Buckeye a trial.

Q. You had a contract with the du Pont Company to buy powder? A. No, sir.

Q. Dooley Brothers? A. No, sir.

Q. You didn't? A. No.

Q. Did you ever have a contract with anybody?

A. No, sir.

6611

Q. How much powder did you use? A. When?

Q. Per year? A. I should judge about 200 kegs.

Q. Now, it seems that you made two purchases, according to your testimony, of Buckeye powder; will you kindly tell when that first purchase was made, again? A. In 1905.

Q. What month? A. That, I don't know.

Q. When did you make a second purchase? A.. 1905 also.

Q. What month? A. I don't know.

Q. How long after the first purchase was it?

6612 A. I can't exactly recall that.

Q. Was it a week or a month, two months or six months? A. I don't know; it might have been a couple or three months; I don't know; two or three.

Q. When was it you made this experiment that you have testified to regarding the Buckeye powder; when was it you made that? A. It was in 1905.

Q. What month in 1905? A. That, I can't recall.

Q. Early in the year or late in the year? A. I can't recall that.

Q. You were satisfied, after making that examination, that Buckeye powder was not as good as du Pont powder? A. I wouldn't say that; it wouldn't work, and the miners wouldn't use it.

Q. It wouldn't work in your mine? A. No, sir.

Q. And your miners would not use it? A. No, sir.

Q. Why did you make the second purchase? A. Why?

Q. Yes. A. Because they wanted me to try it again; they said that if I had a different grade, it might work the coal.

Q. Did you buy a different grade? A. Yes.

Q. What grade did you buy the first time? A. I think it was double "C."

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Q. And what the second time? A. A little stronger powder I think it was; I think it was the "C," I ain't sure.

Q. You stated, I believe, that you had bought some powder made by the Western Manufacturing Company? A. Yes, sir.

Q. When was that? A. I can't recall the time

Q. Do you know when the Western Manufacturing Company began business? A. No sir.

Q. You don't know that? A. No.

Q. You have spoken of that as being the same as the Buckeye powder? A. Is it?

6615

Q. I guess so. Why did you come to buy the Western powder again, which you, regarded as the same as Buckeye, after you found that the Buckeye wasn't good? A. A different firm took hold of it, and I happened to run across one of the salesmen, and he asked me to give it a trial again.

Q. Do you know what kind of kegs that powder was packed in that you received from the Western Powder Company? A. Tin kegs.

Q. I mean, with reference to how those kegs were branded? A. I don't understand what you mean.

Q. The kegs in which the powder is sold and used, are variously branded, are they not? A. Yes, sir.

Q. Do you remember how the kegs were branded that contained the powder which you bought of

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Patrick Martin—Direct

the Western Manufacturing Company? A. How they were branded?

Q. Yes. A. They had on "Western Powder Company."

Q. Are you sure of it? A. Yes.

Q. You are sure of that? A. Yes, sir.

Deposition of PATRICK MARTIN, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Laffey:

Q. State your name, your residence and your business. A. My name is Pat Martin, Limestone Township, and business was coal operator and miner.

Q. What state? A. Illinois.

Q. For how long have you been engaged as a coal operator? A. Since '94.

6618 Q. 1894? A. Yes.

Q. Are you a practical miner yourself? A. Yes.

Q. State what experience you have had in the actual mining of coal, Mr. Martin? A. I have been in the mines for 45 years, mining coal for other parties, and since '94, I have been operating for myself.

Q. Where have you mined coal as a miner? A. I have mined in Scotland and in Iowa, and I have mined for a time in Illinois.

Q. In Illinois? A. Yes, sir, most of the time.

Q. What was the name of the mine that you operated in Illinois? A. It went by the name of the Martin Coal Company.

Q. Where is that mine located? A. Well, it's about three miles from the city in Limestone Township, Illinois.

Q. Three miles from what city? A. Peoria.

Q. Did you use blasting powder in that mine? A. Yes, sir.

Q. Were you operating that mine between the years 1903 and 1909? A. Between them years, yes.

Q. Are you still operating that mine? A. No, not for about a month; we are done there now; it's all worked out.

Q. Did you work in the mine yourself during the years I have named, between 1903 and 1909? A. Yes.

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Q. What was your position in that mine? A. Mine foreman.

Q. Who purchased the supplies for the mine? A. I did.

Q. Did you purchase the powder used in that mine? A. Yes, sir.

Q. How much powder did you use in that mine per year? A. In the neighborhood of four or five hundred kegs; that is as close as I can come to it for the year.

Q. Do you know the blasting powder known as the Buckeye powder? A. Yes, sir.

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Q. Did you ever buy any of that powder for use in the Martin mine? A. I did buy a little of it.

Q. Who sold you that powder, the first you got? A. A fellow by the name of Jones.

Q. Who was he representing? A. Buckeye.

Q. Do you know about when that was that you bought the first powder from Jones? A. I think that was around 1905, as near as I can recollect. My mine was open a little while.

Q. How much powder did you buy of Mr. Jones at that time? A. Well, I got 10 kegs the first time, to try it, and then I give him an order, I think it was for 50 kegs, as near as I can recollect.

Q. Before you purchased these lots of powder

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Patrick Martin—Direct

from the Buckeye Powder Company, what powder were you using? A. Du Pont powder.

Q. Did you personally use Buckeye powder in your mine? A. Yes, sir.

Q. Yourself? A. Yes.

Q. Now, did you see the holes charged with it and the effect of the blasts after they had been fired? A. Yes, sir.

Q. How did the Buckeye powder compare in price with the du Pont powder, if you recollect? A. How did they compare in price?

Q. Yes. A. I don't know; there was a difference, but I don't know that there was any difference in the price at that time. It's particularly hard for me to remember if there was; if there was, it's very little, but I don't think there was any difference.

Q. What was the result of your use of the first ten kegs of powder which you got from the Buckeye Powder Company in your mine? A. It worked good; it made good coal.

Q. The first ten kegs? A. Yes.

Q. How soon after you used these ten kegs did you give a regular order? A. Yes, I give a regular order; I always gave orders for 50 kegs; I had a box that would hold that much.

Q. Through whom did you order those 50 kegs? A. From Jones.

Q. Did you personally take part in the use of those 50 kegs in your mine? A. Yes, sir.

Q. Did you see the effect of exploded shots charged with Buckeye powder? A. Yes.

Q. State what you observed, Mr. Martin, with reference to the use in your mine of that 50 keg lot of powder, and tell us what you observed as the result of that 50 kegs in your mine. A. The result of these 50 kegs,—they didn't seem to do the work of the first 10, and they would put in a

blast of this powder, and consequently, you would just see where the powder come out; it made a little crack, and that would be all; it wouldn't throw the coal out; we had to do it again; and it spoils your room; you can't get them out. They shot it again—you can't afford to do that; you can't get them out for a day or two. They shot it again, and it's the same thing over again, and it takes some time before you can get your room in proper shape again, and they blamed the powder for it, when it don't do the work. That was the result of this 50 kegs; we used a lot of it, and there was ten more in there; we miscalculated with them, but we bought them; there were ten men in there, and they had had the same results, and we didn't buy any more powder for some time; and there was another agent came along some time after—

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Q. Did you afterwards try some more Buckeye powder in your mine? A. A good while after.

Q. You did? A. Yes.

Q. State the circumstances of your further trial of Buckeye powder, and also state from whom you received it. Well, there was an agent come along, and his name was Pepperd, some time later, and he wanted me to buy some powder, and I told him what happened with the other, that I couldn't use it and it couldn't do the work. He said they had changed the machinery and the powder was better now; and he said he would give me two kegs for nothing, to try. And I took these two kegs and used them, myself, and I didn't find very good results, and I didn't order any; they wouldn't do the work, and I ended it right there.

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Q. Did you afterwards buy any more Buckeye powder? A. Not the Buckeye; I bought from that mill, but it was later on; I suppose it is two or three years ago.

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Patrick Martin—Direct

Q. Did you afterwards buy any more powder from the Buckeye Powder Company? A. No, sir.

Q. Did you ever have any conversation with any officer or agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. Do you mean, did I ever say anything about the powder?

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Q. (Stenographer repeats the question). A. Well, it might have been mentioned in the conversation, but there was never anything said direct about it; I might have mentioned it was no good, or I might have mentioned that I had used it, or something like that; they know I used it.

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Q. Mr. Martin, in a suit brought in the District Court of the United States, at Trenton, New Jersey, in which the Buckeye Powder Company is the plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are defendants, it is claimed that the defendants in that suit, and certain companies and persons described as co-conspirators, induced the P. Martin Coal Company to cease purchasing powder from the Buckeye Powder Company, the names of the persons described as co-conspirators are Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the companies referred to as co-conspirators, are the E. I. du Pont de Nemours and Company, the E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and

Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company. I will ask you to state whether or not any of the officers or agents of the E. I. du Pont de Nemours Powder Company, or any of the officers or agents of any of the companies I have named, or any of the representatives or agents of the persons I have named, ever induced you to cease the purchasing of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.)

A. They never induced me, no sir.

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Q. State whether or not any effort or attempt was made by any of the persons or any of the officers or agents of the persons or of any of the persons or companies I have named, to prevent your purchasing Buckeye powder, or interfering with your relations with the Buckeye Powder Company?

A. No, sir, they did not.

Cross-examination by Mr. Abbott:

Q. Did you buy Buckeye powder under any other name than the Martin Coal Company, that you know of? A. No, sir.

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Q. Did you use Buckeye powder anywhere else, excepting in the mines that you testified you owned and operated as the Martin Coal Company? A. No, sir.

Q. Are you able to state positively the dates when you bought Buckeye powder for use by the Martin Coal Company? A. No, sir, I couldn't exactly give you the dates.

Q. I will ask you whether or not you ever bought any powder of the Buckeye Powder Company as "P. Martin?" A. Well, I don't know whether—when I would put in my order, the agent knew me, and I don't know whether they would put down "P. Martin;" sometimes it would be "P. Martin"

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Patrick Martin—Cross

and sometimes the "Martin Coal Company," I suppose.

Q. Are you the P. Martin in the coal business in or near the City of Peoria, Illinois? A. Yes.

Q. Are you the only one? A. The only one?

Q. Are you the only "P. Martin" in the coal business in or near the City of Peoria, Illinois? A. Yes, sir, there is no more, that I know of.

Q. How many kegs did you get on your first order from the Buckeye Powder Company? A. Well, 6635 I got ten kegs for the first try-out.

Q. How many on the second order? A. I generally got 50 on my orders all the time; it is so far a time away, I couldn't tell you to a few kegs, but I got my box filled, and it holds 50.

Q. How many kegs did you get— A. It would be 50 kegs.

Q. You never bought it again after that? A. No; with the exception of two kegs they give me.

Q. The first 10 kegs, as I understand, which you used of Buckeye powder, was very satisfactory?

6636 A. Yes, it done good work.

Q. Do you know of any reason why the second 50 kegs didn't produce as good results as the first 10 kegs? A. No, sir, I couldn't tell you the reason, except when the blast went off, it didn't do the work, and we come to the conclusion it must be the powder, because it treated us all the time alike,—there was ten of us there.

Q. You don't know why the 10 kegs produced good results, and the second 50 did not? A. No, I don't.

Q. You stated that you had been a coal miner for 45 years? A. Yes, sir.

Q. How old are you? A. 56.

Q. You have been a coal miner, then, ever since you have been 11 years old? A. Yes, before I was 11 years old.

Q. And you stated that you afterwards bought powder of the company that succeeded the Buckeye Powder Company? A. Yes.

Q. How long did you continue to buy powder of that company? A. I bought it one winter all together.

Q. Do you know the name of the company? A. The Western Powder Company.

Q. Located at Edwards, Illinois? A. Yes, sir.

Q. What results did you obtain from the use of that powder? A. Good results.

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Q. Good results? A. Yes.

Q. Did you ever use any other powder besides the Buckeye and the Western powder; did you ever use any other make of powder but those two? A. Not in this mine, no, sir.

Q. What kind of powder did you use when you ceased buying Buckeye powder, until you began using the Western powder? A. Du Pont.

Q. How long did you continue to use du Pont powder? A. I guess I used it for ten or twelve years.

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Q. After you ceased buying Buckeye? A. Since 1895, up until now, with the exception, as I say, I used Western for one year, and orders between times, not to amount to very much,—orders now and then; but I used it one winter entirely, two or three years ago.

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Henry Seffer—Direct

Deposition of HENRY SEFFER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Seffer, where do you live? A. 814 Western Avenue, this city.

Q. Do you mind telling how old you are? A. No, sir.

6641 Q. How old are you? A. 39 years old.

Q. What business were you engaged in between the years 1903 and 1909? A. Coal mining; we had a coal mine out there called the Bell Coal Company.

Q. Where were they? A. In the Horseshoe Bottom, about four miles from—

Q. How many years have you spent mining coal? A. About twenty years.

Q. Twenty years' experience? A. Yes.

6642 Q. What work in coal mines have you done? A. Practically everything that is to be done: shot coal, dumped coal, drove the mule—well, practically everything that is to be done in coal mines.

Q. In your mining operations, have you used black blasting powder? A. Yes, sir.

Q. State how black blasting powder was used by you, what you did when you used it? A. Drilled the hole and charged the holes with powder and tamped them, in order to loosen up the coal.

Q. Did you ever fire any shots? A. Yes, I fired them.

Q. What kind of a company was the Bell Coal Company? A. Just co-operative.

Q. How many were there of you? A. Six.

Q. What position did you hold with the company? A. Manager of the mines.

Q. What were your duties as manager? A. I

done the buying and collecting, and selling coal and seeing that the bills were paid.

Q. During the time that you were manager, did you personally work in the mines? A. Yes, sir.

Q. Do you know a powder known as Buckeye powder? A. Yes, sir.

Q. Did the Bell Coal Company purchase, through you, any Buckeye powder? A. Yes, sir, I gave a few orders to the Buckeye Company.

Q. When was it purchased, about what time? A. It is a little hard for me to state; it was along in the winter but I can't say what year.

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Q. Approximately? A. Between 1904 and 1907.

Q. Is the Bell Coal Company in existence now? A. No, sir.

Q. Do you know when it went out of existence? A. I think it was in 1907, when we sold out.

Q. Do you recall how much powder you purchased of the Buckeye Powder Company? A. No, I don't.

Q. Can you state approximately, how much you purchased? A. It may have been 50 kegs, and it may have been 100 kegs.

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Q. After you purchased the Buckeye powder, did you use any of it yourself? A. Yes, I had the biggest part of it to use.

Q. State what use you made of the powder. A. Well, we had one side that worked the coal pretty well; on the East side of the entrance the coal worked good over there, and I could get pretty good results out of the powder; on the other side, it wouldn't work the coal top and bottom like it ought to.

Q. State what you personally saw after you used the Buckeye powder in the portion of that mine which you last spoke about; what effect did it have? A. It wouldn't move the coal out enough so you could get it; that is, loosen it up; by using common

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Henry Seffer—Direct

judgment, you couldn't judge one shot with the other for the same sized shot, you couldn't judge one shot with the other at all, the way the powder acted.

Q. Did you ever try any other powder in that part of the mine? A. Yes.

Q. What? A. Du Pont powder.

Q. What effect did you get from du Pont powder? A. We had better results from du Pont powder in the west side of the entrance.

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Q. After these purchases of Buckeye powder and the use thereof in the mines, did you continue to purchase it, or did you purchase some other kind of powder? A. We always had two kinds of powder; some of the men wouldn't use it at all.

Q. Wouldn't use what at all? A. Buckeye powder; they took in a keg of powder and then wouldn't use it any more, and I had to finish it up myself; the last we bought, I had to use it altogether.

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Q. After you used that up, did you, as manager of the Bell Coal Company, purchase any other powder of the Buckeye Powder Company? A. No, sir.

Q. Why did you cease the purchase of powder? A. Because I didn't want to have the bills running in two places; we only used a little powder, and we didn't want to bother having it from two places, and I bought the Dooley powder from Dooleys altogether, from one place.

Q. Did the results which you obtained from Buckeye powder, have any effect upon your ceasing the purchase of it? A. No, sir.

Q. It didn't? A. No, sir.

Q. Did you fully understand the last question which I asked you? A. I think I did.

Q. (Stenographer repeats the questions as follows): Did the results which you obtained from Buckeye powder have any effect upon your ceasing the purchase of it? A. Yes, sir, it did.

By Mr. Abbott:

Q. What did you answer to that? A. I said "no;" I didn't understand what he said.

Q. Since these objections, you have changed your mind about it? A. Oh, no, I never did.

Q. After you made these purchases of Buckeye powder, did you have any conversation or communication with any agent of the du Pont de Nemours Powder Company with reference to Buckeye powder? A. I never did; I did not.

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Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is the plaintiff and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for a bill of particulars made by the defendants on the Buckeye Powder Company for the names of the customers of the Buckeye Powder Company which were induced to cease or to abandon the purchase of Buckeye powder, the name of the Bell Coal Company is given. In this suit it is also alleged that the following persons and companies, as co-conspirators, induced the Bell Coal Company to cease the purchase of powder from the Buckeye Powder Company. The names of these persons and companies are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Powder Company, Laffin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Invest-

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Henry Seffer—Cross

ment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company. Will you state whether or not any of the corporations and persons which I have named to you as defendants or co-conspirators, or any agents or officers or representatives of these persons or corporations ever induced the Bell Coal Company to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. They did not, no, sir.

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Cross-examination by Mr. Abbott:

Q. Now, aren't you able to identify the date or dates when you purchased powder, that is, Buckeye powder, a little nearer than sometime between 1904 and 1907? A. No, sir.

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Q. You aren't? A. No, sir, it has been from five to eight years since I have been there, and I got other things; I can't remember; we have no records left, and everything was destroyed.

Q. Do you know about how long it was after you bought the first batch of Buckeye powder, that you bought the second batch? A. Yes, I think there was quite a period between the two agents that came there?

Q. How long? A. I don't know.

Q. You said that you knew? A. Well, probably one season to the next.

Q. How many was there in the first? A. I don't know whether it was 10, 20 or 25.

Q. How many in the second? A. Ten, I think.

Q. How many in the third? A. About ten.

Q. How many in the fourth? A. I suppose about ten.

Q. Do you know? A. I don't know.

Q. You can't tell? A. I can't say that.

Q. How many was there in the fifth? A. I don't know.

Q. How many in the seventh batch? A. I don't know.

Q. How is it you remember so well about some of these purchases and not others? A. I ordered most of that powder personally, and some was ordered through the teamster; I would give him the order and he would order it.

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Q. When was it that you tried that shot? A. One of the winters when I was in there.

Q. Was it towards the first or last of the time? A. Towards the last.

Q. Up until that time, had Buckeye powder been satisfactory to you? A. For my own use I used a good bit of it, but some men wouldn't use it at all.

Q. You continued to buy it? A. From time to time.

Q. If it was not satisfactory, why did you continue to buy it? A. The agent was there as regular as the month was up; he was there for another order, and I told him I didn't care for two kinds of powder; I used it myself.

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Q. You continued to buy it? A. I gave him a little order when he came down.

Q. How much powder did you use per year? A. I don't know, hardly.

Q. How many miners did you have? A. Eight to ten, and we would use, probably, two kegs to the man per week.

Q. How many weeks did you run in a year? A. About 28 to 30 weeks, just from September until about February, and we would be done up there.

Q. During the time that you used these various batches of Buckeye powder, did you use other powder? A. Yes, sir.

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Henry Seffer—Cross

Q. What other powder did you use? A. Du Pont.

Q. Du Pont powder? A. Yes, sir.

Q. You testified, I believe, on your direct examination, that you used Dooley powder? A. Yes, sir; I bought it from Dooley Brothers?

Q. Dooley powder? A. Du Pont powder.

Q. You meant you bought it from Dooley Brothers? A. Yes, sir, that's what I said.

Q. Do you know whether any of the other miners used Buckeye powder in that portion of the mine where you used it? A. Yes, sir.

Q. Who? A. There was one room below me that—

Q. That was on the same side? A. Yes, sir.

Q. He found it satisfactory? A. He used it for a while, but he didn't like it and he wouldn't use it; he said "To hell with it," and that is all the satisfaction he gave me.

Q. You continued to buy it and use it yourself? A. Yes, sir.

Q. Isn't it a fact that it is very often the case that the use of any blasting powder, that sometimes it will work better in one portion of the mine than others? A. Yes.

Q. That is true? A. Yes, sir.

Q. Doesn't that apply to du Pont as well as Buckeye? A. To a certain extent it does.

Q. Isn't it also a fact that sometimes one sized grain of powder will produce better results in certain kinds of coal than it will in other kinds of coal? A. Yes, sir.

Q. That is all true? A. Yes, sir, it is.

Q. And doesn't it depend very largely upon whether you have the right kind of grain and the right place to use it? A. It does.

Q. As to whether you get the best results from any grade of powder? A. Yes, sir.

Re-direct examination by Mr. Katzenbach:

Q. Who was the agent from whom you purchased the Buckeye powder? A. I think we bought some from Al Jones.

Q. Al Jones? A. Yes, sir.

Q. And anybody else? A. And some from George Pepperd.

Q. Are they personal friends of yours? A. Yes, they were miners and we worked together.

Q. You were companion workmen? A. Yes, sir; and they came there and I told them I would help them as much as I could, and I gave them an order from a certain time.

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Q. Through personal friendship? A. Yes, sir.

Q. Go ahead. A. I wanted to see them get along, and I myself used the biggest part of the powder from the Buckeye Powder Company.

Q. Did you have any trouble with du Pont powder in any part of the mine? A. We never had no trouble with it; I can't say that; there were sometimes when shots wouldn't work in that west side, any more than other shots.

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Q. It would not? A. No; as a general run, I got better results.

Q. With du Pont? A. Yes, sir.

Q. Better than with Buckeye, you mean? A. Yes.

Re-cross examination by Mr. Abbott:

Q. Will you swear that Jones and Pepperd were agents of the Buckeye Powder Company at the time you bought this powder? A. No, sir, I wouldn't swear to that, no, sir; but I was positive when I spoke, that it was these people that sold it to me.

Q. That they were agents? A. They said so.

Q. And that they were agents of the Buckeye

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Stephen A. Drake—Direct

Powder Company at that time? A. Well, I don't know what authority they had; I couldn't say.

Re-direct examination by Mr. Katzenbach:

Q. You gave them the orders? A. Yes, sir.

Q. And you got the Buckeye powder? A. Yes, sir, and they got the money.

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Deposition of STEPHEN A. DRAKE, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Drake, where do you live? A. At Canton, Illinois.

Q. How long have you lived at Canton? A. About 48 years.

Q. What is your business? A. My business?

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Q. Are you engaged in business? A. Yes, sir.

Q. What business? A. Coal mining.

Q. Are you engaged in that business personally, or connected with a company? A. Connected with the Canton Coal Company.

Q. Is that incorporated? A. Yes, sir.

Q. What office do you hold? A. President.

Q. How long have you been president of the Canton Coal Company? A. About 25 years.

Q. Where are the mines of the Canton Coal Company located? A. South of Canton, about a mile south of the city.

Q. Between the years 1903 and 1909, did the Canton Coal Company use black blasting powder in its mining operations? A. Yes.

Q. During those years, who made the purchases

Stephen A. Drake—Direct

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of black blasting powder for the Canton Coal Company? A. I did.

Q. Do you recall whether or not you made any purchases of black blasting powder from the Buckeye Powder Company? A. Yes, we did purchase some from them.

Q. During what time did you purchase? A. Well, I should judge it was along in 1902 or '03, up to 1906 or '07, different times.

Q. Do you know the amounts you purchased of the Buckeye Powder Company between those dates? A. No.

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Q. Approximately? A. No, it was just in small quantities, and for from 10, 25, 30 and 100 keg lots, if I remember right.

Q. During the entire time that you purchased Buckeye powder, how many kegs, approximately, did you purchase? A. Well, I don't know that I could say off hand, maybe five or six hundred kegs.

Q. How many kegs of black blasting powder do you use in the Canton Coal Company's mines per year? A. I would say 10,000 kegs.

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Q. During the time that you were purchasing Buckeye powder, did you purchase from any other company? A. We purchased from the du Pont; we had a contract, I think, with the du Pont people.

Q. Will you state why you purchased of the Buckeye Powder Company? A. I don't know that I could say; I think, probably, just for personal feeling for Mr. Waddell, or, just to, help a home industry.

Q. How many miners were in the employ of the Canton Coal Company, approximately, between the years 1903 and 1908 inclusive? A. I think during, probably, during 1903 and 1904, we probably only had 125, probably 250 in 1908; in 1905, we put in a larger mine.

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Stephen A. Drake—Direct

Q. What method was used in your company with reference to supplying miners with powder? A. The miner would sign a check for a keg of powder, either single "F" or double "F," whichever they wanted to use, and they would use the two grades, and we would give it to them and send it down.

Q. State, between the years 1903 and 1908, inclusive, what kinds of powder you used in your mines, specifying the brands of powder. A. I think we used nothing but Buckeye and du Pont.

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Q. Did a miner have any right of selection in your company between the brands of powder. A. Well, we never had enough Buckeye powder, that made the necessity of a choice; some of the miners would not use Buckeye at all, and some would use it, and some wouldn't have anything but du Pont, and we always aimed to give them that; we always had du Pont with the Buckeye when we had it. We tried to get some of the men to use it, and did; but if a man would insist he wanted a certain kind of powder, we didn't argue it, with him, because we found it generally causes trouble.

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Q. Do you recall the latest date that you purchased Buckeye powder? A. I couldn't say whether it was 1906 or 1907.

Q. Did you or did you not, cease to purchase Buckeye powder? A. Yes.

Q. Will you state the facts or circumstances which caused you to cease purchasing Buckeye powder? A. The miners served notice on me that, I remember at one time,—that I would have to stop using Buckeye powder, and they sent their member of the Executive Board and served notice that if I didn't have du Pont there altogether, in two or three days, the miners would go out.

Q. After you purchased Buckeye powder, did you ever have any conversation or communication with

any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder?

A. Not that I remember of; I don't remember anyone talking to me about it.

Q. Do you know or not, Mr. Drake, whether the Canton Coal Company ever received any rebates from the Buckeye Powder Company? A. What do you mean by—

Q. Rebates on prices after the same had been billed or invoiced to you? A. My recollection is, that they used to make us a price on powder in small quantities, the same as I had a contract, and it may have been billed to me at a price, with the understanding that the price would be made that; I don't know whether you would call it rebate or not; sometimes those things are more with the understanding that the price would be the same as other prices, and I think it might have been done in that case.

6674

Q. Mr. Drake, in a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for a bill of particulars of the names of customers of the Buckeye Powder Company induced by the defendants which I have named, or by certain alleged co-conspirators, who are the following persons and corporations, namely: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Pow-

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6676

Stephen A. Drake—Cross

der Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, the name of the Canton Coal Company was given by the Buckeye Powder Company as one of their customers which had been induced by the defendants I have named, or by the alleged co-conspirators which I have named, to abandon the purchase of powder from the Buckeye Powder Company; will you state whether or not any of the corporations or persons whom I have named in this question, or any of their agents or representatives, ever induced the Canton Coal Company to cease the purchase of powder from the Buckeye Company? A. No, sir, I think not.

6677

Cross-examination by Mr. Abbott:

6678

Q. Do you know is your coal company the same as the Canton Union Coal Company? A. No, sir.

Q. You haven't anything to do with the Canton Union Coal Company? A. No, sir.

Q. And as I understood you, you stated that you had a contract with the du Pont Company; when was that contract dated? A. Well, we have had a contract with them for several years, from year to year.

Q. Beginning when? A. I judge back in the nineties somewhere.

Q. You mean 1890? A. Yes, sir.

Q. You had that contract with them down to the present time? A. Yes, sir.

Deposition of George A. Hibberd, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Hibberd, where do you live? A. 1631 Lincoln avenue, Peoria.

Q. How long have you lived in Peoria? A. 28 years.

Q. What is your business? A. Coal miner and dealer. 6680

Q. How long have you been a coal miner and dealer? A. I have been a coal miner ever since I was 13 years old, but I have been a dealer for 14 years.

Q. As a coal miner, what have you done in coal mines? A. Mine coal.

Q. Have you used black blasting powder in your coal mining operations? A. Yes, sir.

Q. State in what way black blasting powder has been used by you in mining coal. A. In blasting off the solid. 6681

Q. Give the different steps you have taken in the use of the powder; in other words, how you used it? A. Why, you figure out a chance, what we call a chance, and drill our holes and put the powder in, and attach the fuse into it, and light it when the proper time comes, and blow the coal out and the coal is loaded up the next day.

Q. Between the years 1903 and 1909, with what company or partnership, were you mining coal, if you did mine coal during those years? A. Hibberd, Snedden and Company.

Q. Was that an incorporated company or a firm? A. No, just a partnership.

Q. It was not incorporated? A. Not incorporated.

6682

George A. Hibberd—Direct

Q. How many members were there in the partnership? A. There was 11 members, but 12 shares; one man held two shares.

Q. It was then, a co-operative company? A. Yes.

Q. Where were the mines of Hibberd, Snedden and Company located? A. Limestone Township.

Q. Between the years 1903 and 1909, did you make any purchase of black blasting powder of the Buckeye Powder Company? A. Yes, sir.

6683

Q. State to the best of your recollection, when the first purchase was made, and how much it was. A. I believe it was in the fall of 1904.

Q. How many kegs did you purchase then? A. Ten kegs, as a trial order, at first.

Q. Did you personally use any of this Buckeye powder in the mines of Hibberd, Snedden and Company? A. Yes, sir.

Q. State was results you got from the use of the powder. Q. How long prior to using Buckeye powder in the mines of Hibberd, Snedden and Company, have you personally used blasting powder in coal mining operations? A. Well, I judge—let's see,—at least 12 years.

6684

Q. Will you state how you used Buckeye powder, and what results you got therefrom? A. I used it in the same manner that I would use other powder; I will say I got fair results from the 10 kegs trial order we got.

Q. After you purchased this trial order, did you subsequently purchase any powder of the Buckeye Powder Company? A. Yes, sir.

Q. How much? A. I notice on my books there is 65 kegs in the month of October, 1904.

Q. Did you purchase the entire 65 kegs in one lot? A. No.

Q. Or more than one lot? A. No, two lots of 50 kegs was the second purchase I made.

By Mr. Abbott:

Q. Are you testifying from your own knowledge or from your book? A. From my own knowledge; I looked at the book this morning, in order to look up the date.

By Mr. Katzenbach:

Q. Did you know, before looking up, what the amount was you bought at that time? A. No, sir.

Q. You refreshed your memory entirely from the book? A. Yes, sir. 6686

Q. Did you or not, make the purchase of 50 kegs of Buckeye powder? A. Yes, sir.

Q. Personally? A. Yes, sir.

Q. You purchased it yourself? A. Yes, sir; that is, for the company.

Q. Do you recall making that purchase? A. I don't just remember how I purchased it, whether it was through an agent or how, but I distinctly remember getting the 50 kegs in one batch.

Q. Of these 50 kegs, did you personally use any of it in the mine? A. Yes, sir. 6687

Q. State fully what you observed as to the work which this powder did in the mines. A. Well, the biggest part of this 50 kegs seemed to be weak; it left the shots tight; some of them was tight, so tight that it was impossible—it wouldn't pay to mine them out.

Q. After the purchase of this 50 kegs, did you have any conversation with any agent of the Buckeye Powder Company, that you recall? A. Not to my knowledge, after the—

Q. Purchase of the 50 kegs? A. Not to my knowledge, no.

Q. State, if you recall, how you happened to purchase the 15 kegs of the 65 kegs you have spoken of. A. That was through an agent, I believe, by

6688

George A. Hibberd—Direct

the name of Pepperd, that came out to the mine later on and told me that a man by the name of—

Q. Just tell what Mr. Pepperd stated to you?

A. Mr. Pepperd stated to me that he was the agent on it; that he had taken the agency for this new powder and that Mr. Walsh was going to handle it; by the way, Mr. Walsh was a man that was buying coal from us, and Pepperd further stated, that they had got the powder up to the standard, and he would like to have us try it again, so we bought 15 kegs through Mr. Walsh.

6689

Q. Did you personally use any of the 15 kegs of Buckeye powder in the mines; this last 15 kegs that you have mentioned? A. I believe I used two of that batch.

Q. State in detail what you observed as to the use of this powder in the mines? A. Well, that seemed to be the same as the other, seemed to be weak.

6690

Q. How did the use of the Buckeye powder affect the coal; state fully what the result of the use of the powder was, to your observation? A. Tight shots was the result.

Q. Will you explain somewhat more fully what you mean by tight shots? A. Shot that were not cracked enough to mine them down; were not cracked enough to enable you to get the coal.

Q. After the purchase of this 15 kegs you have last spoken about, did you make any further purchases of Buckeye powder? A. Not to my knowledge.

Q. Why didn't you make any further purchases? A. Well, we had talked it over, and come to the conclusion that it didn't pay us.

Q. After you began the purchase of Buckeye powder, did you have any conversation with any agent or representative of the E. I. du Pont de Ne-

mours Powder Company regarding Buckeye powder? A. I don't know that I did; I don't remember any conversation to that effect.

Q. Mr. Hibberd, in a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company, in answer to a demand of the defendant for the names of customers of the Buckeye Powder Company induced by the defendants whose names I have given you, or certain parties in the suit designated as alleged co-conspirators, whose names are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, the name of your firm, Hibberd, Snedden and Company, is given by the Buckeye Powder Company as one of the customers of the Buckeye Powder Company who was induced by the defendants or alleged co-conspirators whom I have named, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not your firm, Hibberd, Snedden and Company was induced to abandon the purchase of

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6694

George A. Hibberd—Cross

powder from the Buckeye Powder Company, by any of the persons or corporations I have named, or by any agent or representative of those persons or corporations? (Objections overruled, exception allowed). A. We were not.

Cross-examination by Mr. Abbott:

6695

Q. Mr. Hibberd, you stated that you had been a dealer on coal for fourteen years? A. Yes, sir.

Q. How long did you state that you had been a miner of coal? A. Well, about 26 years, I believe.

Q. How old are you? A. 40.

Q. 26 and 14 makes 40 years? A. Yes, sir.

Q. Which makes it, that ever since you were born, you have been a coal miner and coal dealer? A. No.

Q. How do you figure it out? A. I started to work in the mine when I was between 13 and 14.

Q. How long did you continue to work in the mines? A. Up to the present day.

6696

Q. You have been a miner more than fourteen years? A. Well, when as a boy I worked with my father, I couldn't consider myself a miner.

Q. Where has your mining experience been obtained? A. In Peoria County, except one season in Fulton County.

Q. In your operations of the firm of Hibberd, Snedden and Company, how many kegs of powder did you consume per year during the years 1903 to 1909? A. Why, I would judge about from six to eight hundred kegs a year.

Q. What powder did you use mostly during that period? A. We used considerable Hazard, and in the former years we used considerable American and considerable du Pont, and some that went by the name of Equitable, and the Buckeye, and also some Western.

Q. Now, when did you begin using Western powder? A. Two or three years ago; I can't remember.

Q. Are you using it now? A. Yes; there is one man at the mine that takes a little more of Western powder than he does of the other; we have to keep it in stock for him.

Q. From whom did you buy Buckeye powder, other than the Buckeye Powder Company, if anybody? A. All that I bought of the Buckeye powder, I bought from the Buckeye Powder Company, except this 15 kegs I got through Richard Walsh.

6698

Q. How many kegs all told, did you buy from the Buckeye powder, or did you use of Buckeye powder, during the years 1903 to 1909? A. Well, as far as I can remember, about 75 kegs.

Q. State again, when was the first date on which you purchased Buckeye powder? A. I don't know the exact date, but I believe it was in the fall of 1904.

Q. State when you bought the second batch. A. In the fall of the same year.

6699

Q. Can't you be somewhat more specific than saying "the fall?" A. In October.

Q. The first one was in October, or the second one? A. Well, I couldn't say whether it was October we bought it or not, but I paid for it and got a bill of it in October.

Q. You are testifying now from what you know about some bill in your possession? A. Yes, sir.

Q. You got such a bill, have you? A. I believe I have.

Q. Have you got it with you? A. No, sir.

Q. How long since you saw it? A. I don't believe I saw it since I paid it and filed it away.

Q. But you have such a bill? A. I don't know; I believe I have.

6700

George A. Hibberd—Cross

Q. What do you base that belief on? A. I always file my bills away.

Q. Have you looked up anything in the last few days that has refreshed your memory of such a bill being in existence? A. I took a glance through a book this morning to see if I could find what date we bought Buckeye powder.

Q. Did you find any information on that subject? A. I did.

6701 Q. Have you got that book with you? A. No, sir.

Q. Have you any recollection whatever concerning what you have testified to as to the times and amounts when you bought Buckeye powder, except such as you have obtained from your examination of that book? A. Nothing, only my memory.

6702 Q. What is your memory now on that subject, without any references whatever to that book? A. I distinctly remember taking this trial order of ten kegs at first, and then afterwards getting fifty kegs, and also of getting fifteen kegs from Mr. Walsh.

Q. Do you remember now, without any reference to any book, the date you bought the ten kegs? A. No, sir.

Q. Do you remember without any reference to any memorandum in your possession, the date when you bought any other batch of powder from the Buckeye Powder Company? A. No, sir.

Q. Then, the fact is, you have no recollection of the matter except such as you have obtained from this book? A. Yes, sir, I have.

Q. State what recollection that is. A. I remember when the Buckeye mill first started to distribute powder.

Q. I am not asking you for your recollection of whether you purchased Buckeye powder, but when

and the amounts; have you any independent recollection about that matter, except that which you obtained that book? A. No more than——

Q. In the first place, you can answer that yes or no, and then explain, if you wish. A. Then I will say no.

Q. You stated that you fired some shots with Buckeye powder yourself, personally? A. Yes, sir.

Q. How many shots did you fire with Buckeye powder yourself, personally? A. I can't say now.

6704

Q. Can you give an estimate? A. Yes.

Q. Please do so. Now, I want you to estimate what you distinctly remember. A. Well, I can't answer it then, because I don't distinctly remember how many.

Q. Do you distinctly remember any one shot that you fired with Buckeye powder? A. Yes, sir.

Q. Describe that shot. A. I remember taking in a keg of it and tamping two shots of it one day, and the result was——

Q. I am not asking you for the results; describe that shot, not just tamping it, but how you made that shot and all about it, and how you handled that powder preparatory to making that shot, and how you fired it, of your own independent recollection. A. I couldn't say how thick the shot was or how long, any more; but I will say I tamped it just the same as if I had tamped it with any other powder which I had been using before, and fired it in the same manner.

6705

Q. I want you to keep as close to the question which I ask you as possible, and that is, I want you to tell me exactly how you did it, not by stating how you did it with reference to something else, but I want you to say how you did that. A. We would have a drilling machine to bore the

6706

George A. Hibberd—Cross

holes; I set up the machine and laid down my scraper alongside of the shot, and took a measurement of it, and drilled the hole and made the cartridges of paper upon a 1½-inch stick, and I can't remember just how much powder I put in it; it seems to me it was in the neighborhood of four feet.

Q. Why does it seem to you so, when you say you can't remember how much you put in? A. Because my shots averaged about that size.

6707

Q. You judged you used about that much Buckeye powder, as you used all other powder, you say? A. Yes, sir.

Q. And that is the only way you have any recollection of the amount of powder you used at that time? A. Yes, sir.

Q. You may proceed now. A. I fired the shots that evening, and come back in the morning to load up the coal, and the shots were just barely cracked. The result was, that I had but very little coal the next day to put out.

6708

Q. Now, I believe you said you could remember at least two shots you fired of Buckeye powder; is that correct? A. Yes.

Q. Describe the other shot. A. The same answer.

Q. The same answer? A. Yes, sir.

Q. Did you do it in the same way? A. Yes.

Q. And got the same results? A. Yes.

Q. Were these two shots fired on the same day? A. Yes.

Q. And loaded at the same time? A. Yes.

Q. Did anyone assist you in loading it at the time you were preparing the shots? A. No, sir, I was working alone.

Q. All alone? A. Yes.

Q. You stated that you had fired these two

shots; was that all you did that you can recall distinctly that you fired with Buckeye powder?

A. No; I fired more than that.

Q. I am asking you about firing these shots you distinctly remember; you stated you could remember some in a general way, and some distinctly. You said two of those you can remember distinctly.

A. I can't remember the shots distinctly and how they looked; but I remember the results of the first batch of powder that we got from there.

Q. You are speaking of the whole batch? A. 6710
Yes, sir; that's about all I could go by is the results.

Q. Do you remember any shots that you ever fired with any other powder, distinctly? A. Yes, sir.

Q. What kind of powder did you use when you fired some other shots that you remember distinctly? A. I can remember the shots fired with American powder.

Q. Any other powder? A. Yes, sir.

Q. What kind of powder was that? A. Du Pont. 6711

Q. Du Pont powder? A. Yes.

Q. Tell us what you know at this time, of your own independent recollection, of what shots you fired with Du Pont powder, that you now say you can recall? A. I had good shots with Du Pont powder, I might say.

Q. It is clear that that is what you might say and what you want to say?

Q. I would like to have him tell when and how he shot it. Will you answer the question, Mr. Hibberd?

Q. Describe the shots that you distinctly recall that you made with Du Pont powder. A. Well, the coal was——

Q. I am not asking you for results, I am asking you to describe the shots with the same degree of

care that you have attempted to describe the shots made with Buckeye powder. A. I drilled the holes in the same manner, and measured the shots in the same manner with the regular rule for the amount of powder, and the shots would be cracked open like, sometimes blown out.

Q. You say sometimes blown out; were there times when they did not blow out? A. Yes.

Q. You got tight shots from Du Pont powder? A. Not tight standing shots.

6713 Q. Isn't it a fact, that in the use of all powders, whether it be Buckeye or Du Pont or American or Equitable, or any other powders you used, that now and then you would get a bad shot? A. Yes.

Q. Isn't it a fact, that most experienced miners, no matter how much care they use, will now and then mistake their judgment of the manner in which the hole is driven; is that true? A. Yes, sir, that is true.

Q. And the amount of powder to put in? A. Yes.

6714 Q. And as to the manner of tamping it? A. Yes, sir, that's true.

Q. And as to the manner of firing it? A. Well, I couldn't say about firing it; all you have to do is to light it, and the powder does the rest.

Q. You have stated here that you followed the regular rule when you put the powder into the holes, that is, Du Pont; did you follow the regular rule when you put powder in the holes for the Buckeye? A. Yes, sir.

Q. State what that regular rule was. A. Take a shot six feet long, for instance, and drill a six-foot hole in it, the shot may have an average thickness of four feet; it will take about four feet of powder to loosen this shot up good, four feet of powder, and a 1½-inch cartridge, that is, in the coal I have been used to working.

Q. That is the regular rule? A. That's my rule.

Q. Is that a rule established by you for the use of powder in your mine, or is that the regular rule followed by miners? A. That is my rule individually.

Q. These shots that you fired with Buckeye powder, were they slanting shots or straight shots in the drilling; were they drilled slantingly or straight? A. Do you mean slanting up and down, horizontally?

Q. Horizontally. A. You mean, they were curving shots?

6716

Q. I am trying to find out the relative slant of shots with reference to the face of the coal. A. Well—

Q. In other words, what degree did you use in drilling your holes? You understand the word "degree" in that sense? A. Yes, sir.

Q. What degree did you use? A. I can't figure it down to degrees, but I would say I took this shot about $3\frac{1}{2}$ feet thick at the heel, and drilled it to $4\frac{1}{2}$ feet thick on the point.

6717

Q. You are describing the thickness of it; I want to get the slant. You can state whether it was between one degree and another degree, if you wish; I would like to get the degree of slant of the hole with reference to the face of the coal. A. I always pitch the shots upward.

Q. What degree of slant did you use? A. I generally give them one foot in six, but you can't get it exactly. Well, that's according to the conditions; sometimes there might be a nigger-head in the shot, and sometimes the top coal hanging in it. In that case, you would shoot a little high; start in the middle of the coal and let it go to the roof.

Q. In drilling a hole for the purpose of making a shot, you have to use very considerable judgment, don't you? A. Yes, sir.

6718

George A. Hibberd—Redirect—Recross

Q. And you may make a mistake in your judgment? A. Yes.

Q. And it doesn't make any difference what kind of powder it is, if you make a mistake in drilling your hole, such a shot is a failure? A. Yes; not always a complete failure, but——

Q. More or less? A. More or less.

Redirect Examination by Mr. Katzenbach:

6719

Q. Independent of any refreshing of your recollection from any paper or book in your possession, can you state the amount of powder you purchased of the Buckeye Powder Company? A. There were 75 kegs, to my knowledge; there may have been more.

Q. Did you get these all at one time? A. No, sir.

Q. State the amount that you got each time. A. I distinctly remember getting ten kegs the first time, and then fifty kegs the next time, and fifteen kegs one time.

6720

Recross Examination by Mr. Abbott:

Q. You just answered that you distinctly remember that you got this powder, when, on your cross-examination awhile ago, you said you couldn't remember that independently of the book which you have and which you have examined; why do you change your testimony on that point? A. It must be because you got me rattled, or something; because I distinctly remember, and have remembered ever since we bought that powder, about getting the 10 kegs first——

Q. Do you distinctly remember the date when you got those kegs? A. No, sir.

Q. How is it you can distinctly remember that you got those 10 kegs, and you can't remember anywhere near the time you got it? A. A person forgets dates.

Q. You can remember somewhere near the time when you got it, can't you? A. I might say seven or eight years ago.

Q. How many different batches did you get of Buckeye powder, separate batches of Buckeye powder? The first was ten, when was the second? A. After I bought the ten.

Q. How many kegs was that? A. 50 kegs.

Q. And when was that, as to date? A. I believe it was in the month of October, 1904.

Q. When was the next batch? A. It might have been in the same month, or it may be a month later; I am not sure.

Q. About how many kegs was that? A. Fifteen.

Q. When was the next batch? A. I don't remember that we ever got any more of it.

Q. You don't remember you got any more at all? A. No.

Q. Is the first batch you referred to, the batch you used in making up the shots which you testified you fired of Buckeye powder? A. The first batch?

Q. Which batch was it? A. That was out of the batch of 50 kegs.

Q. And when was that batch obtained? A. October, 1904.

Q. Now, then, if it should appear to be the fact that you bought Buckeye powder on various dates after October, 1904, will you please state why it is that you continued to buy Buckeye powder, when you found by experience that it was not the best powder for you to use? A. I will say, there was one man in the mine that used the biggest part of this 50 kegs, and if we did buy any more, it was for him.

Q. What was that man's name? A. Lyman Monroe.

6724

Benheart Heitzman—Direct

Q. Where is he at the present time? A. Limestone Township.

Q. Can you give me his specific address? A. No, I can't, but it's near the Plank Road.

Q. Then, all the powder you bought subsequent to that time, you kept for the use of Mr. Monroe? A. That's the way it comes to my memory now.

Q. When did Mr. Monroe enter your employ? A. I couldn't say, but he worked for us four or five years.

6725

Q. Covering what period? A. I couldn't say exactly.

Q. You said four or five years; you must know something about what years those were. A. Well, we will say from—let me see—we started to mine in '99—about from 1902 to 1907, I believe—not to be exact about it.

6726

Deposition of BENHEART HEITZMAN, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Heitzman, where do you live? A. Bartonville.

Q. Bartonville, Peoria County, Illinois? A. Yes, sir.

Q. How long have you lived at Bartonville? A. I have been down there, well, I boarded there about 16 years.

Q. What business are you engaged in? A. Digging coal at the present time.

Q. How long have you been digging coal? A. About 12 years, off and on.

Q. Between the years 1903 and 1909, did you operate any mines? A. Yes, sir.

Q. What mine was that? A. Heitzman Brothers Coal Company.

Q. Heitzman Brothers Coal Company? A. Yes, sir.

Q. Was it a partnership? A. Yes.

Q. Composed of whom? A. Of me—I don't understand you.

Q. Who formed the partnership? A. I did.

Q. What were the brothers of the partnership? Heitzman Brothers.

Q. What were their names? A. Ben and Xaiver. 6728

Q. And you are the Ben Heitzman of that firm?

A. No, my brother is named Benjamin.

Q. You were a member of the firm? A. Yes.

Q. Where is your mine located? A. Right in Bartonville.

Q. Who did the purchasing of supplies for the mine? A. I did.

Q. You spoke of having dug coal; will you state how long you have worked in a coal mine? A. Yes.

Q. How long? A. About 14 years. 6729

Q. What kind of work have you done in coal mines? A. I done practically all kinds.

Q. Have you ever used black blasting powder in coal mines? A. Yes.

Q. State just what you have done in connection with the use of black blasting powder. A. Do you mean making shots?

Q. Yes. A. I have drilled the holes and taken a nice square for the shot, like a man would do, about three and a half thick, and about six feet long, according to the chance you have, and made up the place for the powder.

Q. How do you make it up? A. With cartridges, placing the powder—

6730

Benheart Heitzman—Direct

Q. Where do you put the powder? A. In the holes.

Q. After you put the powder in the holes, what do you next do? A. When firing time comes, either shoot it yourself, or, if you got a shot-firer, the shot-firer shoots it.

Q. After you make up your cartridges with powder and put it in the hole, what else do you do? A. Tamp it.

6731

Q. What else? A. Then it is ready to be shot.

Q. Have you used black blasting powder in this way? A. Yes, sir.

Q. Will you state whether you ever used in your mines any powder known as the Buckeye powder, made by the Buckeye Powder Company? A. Yes, sir.

Q. Of Edwards, Illinois? A. Yes, sir.

Q. Who made the purchase of that powder? A. I can't just think of his name now, George Pepperd.

6732

Q. Who was George Pepperd? A. He was the agent of the Buckeye Powder Company at that time.

By Mr. Abbott:

Q. How do you know he was the agent of the Buckeye Powder Company? A. That's what he told me.

Q. You have no information other than that? A. No, sir.

Q. What did Mr. Pepperd say to you when he came there to your place of business, if anything?

A. He said—he asked me to deal with him and asked me to buy the Buckeye powder, and I told him I didn't care about buying the powder right away, as we had powder.

Q. Why did you buy the powder? A. Well, he

kept talking there quite awhile, and finally I told him that I would try it anyhow.

Q. How many kegs did you order? A. I think the first batch was either four or five kegs; I couldn't say for sure.

Q. State whether or not it was delivered to your mine. A. Yes, sir, it was delivered at the mine.

Q. What powder had you been using before you purchased Buckeye powder? A. Du Pont.

Q. State whether or not there was any difference in the price of Du Pont powder and Buckeye powder, to you? A. Yes. 6734

Q. What was the difference?

Q. Was there any difference in price? A. Yes.

Q. What was the difference? A. \$1.15 and \$1.25.

Q. Which was \$1.15? A. The Buckeye.

Q. And which was \$1.25? A. Du Pont.

Q. After the Buckeye powder was delivered to your mill, who used it in the mine? A. I used some of it.

Q. State how you used it and what results you obtained from the used of it. A. I used it the same as I did other powder before I got that, and the results wasn't any good. 6735

Q. State fully what you observed from the use of the Buckeye powder; what effect did it have upon the coal? A. Well, it was, to my knowledge, or never proved satisfactory, and we couldn't never knock out a shot with it, and it always left standing coal, and it was hard to get out after it was shot.

Q. Just explain what you mean by "standing" coal. A. A shot that would work up and down all right, but it wouldn't shove it very far; it would shove it a little ways, and stand right there.

Q. After you tried this Buckeye powder, did you

6736

Benheart Heitzman—Direct

afterwards buy any other of the same make? A. Yes—I don't understand you.

Q. Did you afterwards buy any more of this same powder? A. Yes, sir.

Q. Who used the second lot of Buckeye powder in the mine? A. I used some of it.

Q. State fully the results of your personal use of this second lot of powder in your mine and what you observed were the results of the use of it. A. I found it just the same as what the rest was; we used a little more, and added a little more to it; we thought we hadn't given it a fair trial, and kept adding more to it, the same size, and it didn't seem to do much better.

6737

Q. Will you state, Mr. Heitzman, just what you did with the Buckeye powder in the mine from the time you took it into the mine until you were through with it; explain fully just what you did with it. A. Well, as I said before; it didn't prove satisfactory.

6738

Q. State what you did with the powder, how you used it. A. I drilled the hole, the same as I had always used the other powder, and took a shot about 3 feet or 3½ feet thick by 6 feet, and tamped the hole, and made the cartridge and used it the same as I would any other powder.

Q. Who fired it? A. I did, sometimes, and sometimes my brother did.

Q. What did you observe as to the results of this use which you have explained of the Buckeye powder; state fully what effect it had, if any, upon the coal? A. Why, it was the same, we tried to do the best we could, to my knowledge; it worked as I said before, it cracked the shot up and down, but it wouldn't shove it very far, and left it standing pretty hard, and it was pretty hard to get out.

Q. After you made these two trials of Buckeye

powder, did you continue to use that powder in the mines? A. No, sir.

Q. After you purchased the Buckeye powder, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir.

Q. Mr. Heitzman, in a suit in the United States District Court for the District of New Jersey, brought by the Buckeye Powder Company as plaintiff, against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company has stated in a paper filed in that cause, that you were induced by these defendants, or by certain other persons mentioned in the pleadings, and certain other companies, also mentioned in the pleadings, to abandon the purchase of powder from the Buckeye Powder Company. These persons and companies are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskett, Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, Du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, International Smokeless Powder and Chemical Company. I now ask you to state whether any of these corporations or persons whose names I

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6742

Benheart Heitzman—Cross

have given you, or their agents or representatives, ever induced you to cease purchasing powder from the Buckeye Powder Company?

Objection overruled and exception allowed.

Cross Examination by Mr. Abbott:

6743

Q. Do you know all the persons, associations and corporations whose names were read to you? A. No, sir.

Q. Do you know all the agents or representatives of all those persons whose names were read to you? A. No, sir.

Q. How many shots did you fire or use of Buckeye powder? A. I couldn't tell you; I used quite a few of them.

Q. When did you first make use of Buckeye powder? A. In 1906.

6744

Q. What month? A. I couldn't tell you exactly what month it was.

Q. When was it? A. During the summer time.

Q. How many kegs of powder did you use at that time? A. Either 14 or 15 kegs, I couldn't say.

Q. Did you ever have a failure in a shot that you had placed of any powder than Buckeye powder? A. Yes, sir, at certain times; sometimes you misjudge a shot.

Q. Sometimes you misjudge a shot? A. Yes.

Q. Isn't it true that the most experienced miners with the use of any powder, will at times misjudge the placing of a shot? A. Yes, sir.

Q. And that the same miners will get a different result from the use of the same powder? A. Yes, sir, I suppose they will.

Q. That is true? A. I suppose it is.

Q. Isn't it a fact that experienced miners have misjudged the quantity of powder that it takes to bring down the coal which they are attempting to bring down? A. Yes.

Q. Isn't it a fact, that whether or not good results are obtained from any grade of powder is largely a matter of chance? A. I don't quite understand you right there.

Q. Well, can you answer that question from your understanding of the question? (Stenographer repeats the question.) A. Yes, sir.

6746

Q. Mr. Heitzman, you stated that this man who sold you this powder told you that it was better powder than the powder that you had been using? A. No, sir, he just asked me to try it.

Q. He didn't make any representations concerning its quality at all? A. No, not that I know of.

Q. Did you try it without making any experiments as to whether it required different handling from the Du Pont powder? A. No, sir.

Q. You used it in the same way as the Du Pont powder? A. Just the same way.

6747

Q. You didn't change your method? A. No.

Q. Nor the amount? A. No.

Q. Did you ever use a shot of Du Pont powder where the result left the coal standing? A. Yes.

Q. Now, as an experienced man, as you say you are, to what would you attribute such a result? A. There is times that there might have been a nigger-head or something like that on the roof, and sometimes they might misjudge the powder.

Q. That would not be the fault of the powder, would it? A. No, it couldn't be, I don't think.

Q. It could not be? A. No.

Q. About what is the proportion of shots that proved to be entirely satisfactory to the miner, with any grade of powder that he uses; about what

6748

Benheart Heitzman—Redirect

is the usual proportion, taking the use of powder over a period of weeks, say 100 shots; how many shots of those would be entirely successful and to the entire satisfaction of the miner? A. I think if a man is a practical miner, he ought to get quite a few of them; he ought to get 80 or 90 shots.

Q. 80 or 90 shots? A. Yes, sir, 80 or 90 that would work.

6749 Q. That applies to one grade of powder the same as another? A. Yes, sir; that is, if he can judge it right.

Redirect Examination by Mr. Katzenbach:

Q. Did you get that average from the use of Buckeye powder, 80 or 90% of the shots? A. No, sir.

6750 Q. State what percentage you got of good shots out of the Buckeye powder which you used. A. Well, there wasn't a very big percentage; I just used about 14 inches of powder more than I did with Du Pont to get the same amount of coal, and then lots of times I had to work hard to get it.

Q. Can you state what percentage of good shots you got from the Buckeye powder you used in your mines? A. There wasn't very many.

A. No.

Q. Will you state how many good shots you recall having had from the Buckeye powder that you used? A. No, sir.

Q. What powder did you use after you ceased using Du Pont powder? A. Du Pont.

Q. State how the price of Du Pont powder which you bought after you stopped purchasing Buckeye powder compared with the price of Buckeye powder. A. There was 10 cents difference.

Q. Which was the higher priced? A. Du Pont.

Benheart Heitzman—Recross
Oscar Boetticher—Direct

6751

Recross Examination by Mr. Abbott:

Q. What price did you pay for Buckeye powder?
 A. \$1.15.

Q. Sure of that? A. Yes, sir.

Q. Was that price F. O. B. the mills? A. No, sir, delivered at the bank.

Q. Who delivered it? A. George Pepperd.

Q. Do you know whether he delivered that powder to you from the Buckeye mills, or from a dealer in powder in the City of Peoria by the name of Walsh? A. The first powder, I couldn't tell you—well, I couldn't tell you either, but I think we once got it from Walsh. 6752

Q. How far apart were the purchases which you testified you made of the Buckeye powder? A. They were not over six or eight weeks, I don't think.

Q. And the first one was how much? A. Either four or five kegs.

Q. And the second one was how much? A. I think ten kegs. 6753

Deposition of OSCAR BOETTICHER, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Boetticher, where do you reside? A. Evansville, Indiana.

Q. How long have you resided at Evansville? A. 45 years.

Q. Are you engaged in business there? A. Yes, sir.

Q. What business? A. The wholesale hardware business.

6754

Oscar Boetticher—Direct

Q. What is your name—what is the name of your firm or corporation? A. Boetticher and Kellogg Company.

Q. Is it a firm or corporation? A. A corporation.

Q. Do you hold any office in that corporation? A. Vice-President.

Q. Does your company deal at all in black blasting powder used in mines? A. Yes, sir.

6755

Q. How long has your company been in existence as a company? A. A corporation or a company, or the two together?

Q. Yes, the two together. A. 55 years, I think; I am not sure of that.

Q. How long have you been connected with the company, either as a firm or corporation? A. Thirty years.

Q. Do you recall when you became a corporation? A. In 1898.

Q. What office did you hold in the corporation between the years 1903 and 1909? A. None.

6756

Q. Were you working for the corporation at that time? A. I was, yes.

Q. What were your duties, if any, with reference to the purchasing of black blasting powder between the years 1903 and 1909? A. I purchased powder and other lines.

Q. But were you the purchasing agent of the company for powder between the years 1903 and 1909? A. Yes, sir.

Q. Do you recall or not, whether your company purchased any powder of the Buckeye Powder Company? A. They did.

Q. Can you recall about the time of that purchase or purchases made? A. I don't recall the exact year; I think I answered that question; I don't remember, though, the year.

Q. Can you approximate the year? A. 1905, I think it was.

Q. For what purpose did you purchase black blasting powder? A. To sell to the dealers in the different towns.

Q. After you purchased the powder of the Buckeye Powder Company, did you continue to purchase the powder from that company, and if so, up to what time? A. Just a short while, I think; I don't remember how long; it was possibly two or three months.

6758

Q. What were the reasons, if any, which caused you to cease the purchase of powder of the Buckeye Powder Company? A. Well, as near as I can remember, we couldn't buy to advantage to make any money for ourselves or for our customers, on account of being slow in shipment, and there was no demand for Buckeye powder.

Q. After the time that you purchased the Buckeye powder, did you meet any of the agents of the E. I. du Pont de Nemours Powder Company? A. Did we meet any of them?

6759

Q. Did you meet any of them? A. Yes, I think we did.

Q. What agents did you meet? A. Some of the du Pont men, and some of the Hazard men, and the Laflin and Rand men.

Q. What conversation, if any, with reference to the Buckeye powder, did you have with any agent of the du Pont Powder Company, or of the Hazard Powder Company, or of the Laflin and Rand Powder Company? A. None, that I know of; they were in there soliciting sporting powder business.

Q. Did you have any conversation at all with any agent of these companies that you have mentioned, with reference to the black blasting powder or Buckeye powder? A. In reference to the two together?

6760

Oscar Boetticher—Direct

Q. Well, with reference to the Buckeye powder?

A. I tried to buy du Pont powder, but I couldn't at that time; they had an agent in Evansville, and I couldn't buy it from their agent at a price we could make any money on it. The du Ponts referred me to their agent.

Q. Was anything said in these conversations with reference to the Buckeye powder at all? A. Not that I remember.

6761 Q. After you purchased Buckeye powder, did you have any conversation with any of the following persons, whom I will name, or anyone representing himself as an agent of these persons: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene M. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable or Jonathan A. Haskell? A. They are all strangers to me.

6762 Q. After you purchased the Buckeye powder of the Buckeye Powder Company, did you have any conversation with any officer or agent representing the following companies, other than you have referred to? I will read the names of the companies, Judson Dynamite Company, Fairmont Powder Company, Laflin & Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, Eastern Dynamite Company, a corporation known as E. I. du Pont de Nemours and Company of Pennsylvania, International Smokeless Powder and Chemical Company and E. I. du Pont de Nemours and Company, the latter being a different concern from the E. I. du Pont de Nemours Powder Company? A. In regard to blasting powder?

George W. Hatch—Direct

6763

Q. Yes. A. I suppose I might have asked them the prices on them and the price wasn't satisfactory; at least, I don't remember buying any at that time.

Q. Do you recall any conversation with any officer or agent, other than you have testified to, of the companies which I have just read to you? A. No, sir.

Q. After you purchased the Buckeye powder, were any efforts made to induce you or persuade you not to continue the purchase of Buckeye powder from the Buckeye Powder Company by either the E. I. du Pont de Nemours Powder Company or any of the gentlemen or companies whose names I have just given to you, or the agents or servants of any of them? A. No.

6764

Deposition of GEORGE W. HATCH, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

6765

Q. Mr. Hatch, where do you live? A. Greenview, Illinois.

Q. How long have you lived in Greenview? A. All my life, except four years I was in Petersburg, ten miles away.

Q. Have you any connection with the Greenview Coal and Mining Company? A. Yes, sir, I was.

Q. What office did you hold? A. I was President of the company, I think, in possibly '93 and '94, and from '99 until '07, I think in March, 1907, I was general manager.

Q. What business were they engaged in? A. Mining coal.

6766

George W. Hatch—Direct

Q. Where were their coal mines? A. In Greenview, Illinois.

Q. Did that company use black blasting powder in its coal mining operations? A. Yes, sir.

Q. Who made the purchases of black blasting powder for the company? A. I did the time I was manager.

6767

Q. Between the years 1903 and 1907, did you make any purchase of black blasting powder for the company? A. Yes, sir.

Q. I understood you to say you didn't act as manager longer than March, 1907? A. No, sir.

Q. Is that what you meant? A. Yes, sir.

Q. Did the company go out of existence at that time, or did you sever your connection with it? A. It went out of existence; that is, we ceased to operate.

Q. Then, you didn't operate the mines of the Greenview Coal and Mining Company after March, 1907? A. Sometime in March, 1907.

6768

Q. How much black blasting powder did you use per year at the mines of the Greenview Coal and Mining Company? A. Well, I can't say just off-hand, but it run somewhere around five or six thousand kegs, I think.

Q. Do you recall whether you ever purchased for the company any powder known as the Buckeye powder, from the Buckeye Powder Company? A. Yes, I did, some.

Q. Did you know any of the officers of the Buckeye Powder Company? A. I don't know that I knew any of them outside of Mr. Waddell.

Q. Do you know or not, whether he was an officer of the Buckeye Powder Company? A. I couldn't say; I supposed he was manager of it, I think—I couldn't say; I think at that time he was President; maybe I am wrong about that.

Q. The Mr. Waddell you have referred to is the Mr. Waddell that is sitting here in the room, Mr. R. S. Waddell? A. Yes, sir.

Q. State whether you had any conversation with Mr. R. S. Waddell relative to the purchase of Buckeye powder? A. Yes, sir, I think, possibly, two or three conversations with him; I can't say exactly how many times I talked with him about it.

Q. Where were these conversations held? A. Well, I think possibly the first one was in my office, or in the Greenview Coal and Mining Office, at Greenview; I can't say positively whether that is true, whether I was there or at his office in Peoria, but I think it was in the Greenview Coal and Mining office.

6770

Q. State the substance of the conversation you had with Mr. Waddell at that time, with reference to Buckeye powder. A. Do you want me to state how this conversation came about?

Q. State what led up to the conversation and what Mr. Waddell said and what you said. A. If this is permissible, the way I happened to get acquainted with Mr. Waddell and the Buckeye powder—

6771

A. Brice and Burdick of Joliet, they were handling our coal at that time and I was on a deal with them, and became interested in the mine—I can't say, but as near as I can remember, they were agents for the Buckeye powder, or, rather, solicited me to use it; and in that way I became acquainted with Mr. Waddell, who was kind of acting attorney for them in a deal or something of that kind, and I don't remember just now—

Q. Will you detail the conversation which you had with Mr. Waddell, stating what Mr. Waddell said to you and what you said to Mr. Waddell with reference to Buckeye powder? A. Well, in the conversation with Mr. Waddell, I told him I had a con-

6772

George W. Hatch—Direct

tract. He asked me to use Buckeye powder, and I told him I had a contract with the du Pont Powder Company, and that I didn't want to violate that contract. He told me he would make me a powder that was as good as the du Pont powder, and as far as the contract was concerned, it wasn't binding on me, and that he would stand between me and any danger and any trouble I would have with the du Pont Powder Company on account of using their powder.

6773

Q. After this conversation that you had with Mr. Waddell, did you order any of the Buckeye powder? A. Yes, sir, I think I did.

Q. State why you ordered it. A. Well, I forget just the price I was paying for du Pont powder at that time; anyway, Mr. Waddell said he would make Buckeye powder for me that would give me as good results for less money—I think it was 10 cents a keg—I ain't sure; I don't just remember.

6774

Q. After this order was given, do you know or not whether the Buckeye powder was delivered to the mines of the Greenview Coal and Mining Company? A. Yes, sir, it was.

Q. State what facts you know with reference to the use of this powder in the mines. A. Well, the men didn't like the powder, and I don't know—I took the matter up with Mr. Waddell, and I think he took a sample of the du Pont powder, and I am not sure, but I think, he sent me some other powder; I can't remember just the number of kegs I bought the first time—I don't remember now; anyway, I think the last shipment was either two or four hundred kegs—I am not sure—I don't remember just the number.

Q. Did you have any conversation with Mr. Waddell as to what had been the results of this powder in the mines? A. In our mine at Greenview?

Q. Yes. A. I think I did; I think I talked with him.

Q. What did you say to him? A. I possibly wrote him in regard to it.

Q. What do you recall saying to Mr. Waddell in regard to it? A. I can say I said this, or wrote it to him—

Q. Will you then state, Mr. Hatch, what you said to Mr. Waddell, and what he said in regard to the use of Buckeye powder in the mines of the Greenview Coal and Mining Company? A. As I said before, I can't state whether it was in a letter, or whether I told him that the powder was not giving satisfaction; that our men didn't like it, and we had a number of kegs there—I don't know just how many—and we couldn't use it.

6776

Q. What did Mr. Waddell say to you, if anything, in answer to that? A. Whether he wrote me or told me, I couldn't say, but we shipped it to the Manchester Coal Company at Petersburg.

Q. Do you know or not whether that was done? A. Yes, sir, that was done.

6777

Q. How many kegs of Buckeye powder did you purchase of the Buckeye Powder Company? A. I couldn't tell you now just exactly.

Q. Approximately? A. I don't remember whether I got 25 kegs or what number I got first; there were 200 kegs or 400 kegs in the shipment; I used some of them, and I shipped the balance of them to the Manchester Coal Company at Petersburg.

Q. After you shipped the balance of this consignment to the Manchester Coal Company, did you subsequently purchase any powder of the Buckeye Powder Company? A. I can't say now whether I did or not, but I think possibly I got some for the Middletown Company.

Q. But I mean for the Greenview Coal and Min-

6778

George W. Hatch—Direct

ing Company? A. No, not for the Greenview Coal and Mining Company.

Q. After you purchased this powder of the Buckeye Powder Company did you have any conversation or communication, with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. I can't say that I ever did; I might have said something to Mr. Donnelly, but I can't say I ever did.

6779

Q. Do you recall anything Mr. Donnelly ever said to you in regard to Buckeye powder? A. No, sir, I don't think he did say anything; I might have talked to him about it; I may have said something to him about having this powder; I don't know.

6780

Q. In a suit in the United States District Court in the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for the names of customers of the Buckeye Powder Company induced by these defendants which I have mentioned, or by any of the persons or companies whose names I will give to you, to cease purchasing powder of the Buckeye Powder Company, the name of the Greenview Coal and Mining Company was given as one of the customers of the Buckeye Powder Company who were induced by the defendants or the other persons or companies which I will name to you, as one of such customers of the Buckeye Powder Company. The names of the persons in this suit alleged to be co-conspirators of the defendants are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham,

Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell; the companies are: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laffin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. I now ask you to state whether or not any of these defendants, or the persons or companies which I have named to you as alleged co-conspirators, ever, to your knowledge, induced the Greenview Coal and Mining Company to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled; exception allowed.) A. No, sir, they did not.

6782

Cross-examination by Mr. Abbott:

Q. In reference to the last question which was propounded to you by counsel for the defendant, did you follow those names and fully understand that question? A. Whether any of these parties had induced me to quit buying Buckeye powder? A. Yes; did you understand the question? A. Yes, I think so.

6783

Q. Who are parties, associations and companies whose names were read to you by counsel? A. I suppose they constitute the du Pont Powder Company.

Q. Do you know all of the agents or representatives of all of the persons whose names were read to you there? A. I could answer it in this way: I don't think anybody ever tried to induce me, or did induce me, to quit buying Buckeye powder.

Q. How do you know that the miners, whom you have stated did induce you to stop buying Buckeye powder, are not agents or representatives of the persons or corporations; you don't know that? A. No, but I don't think any of my men were agents.

Q. If that were true, your answer would be erroneous? A. Why, certainly, if it were true that any of those men that wouldn't use the powder were agents of these parties.

6785 Q. When did you make the first purchase of Buckeye powder? A. I don't know the date.

Q. Have you any idea? A. I think it was in the fall or winter of 1903—I am not positive.

Q. When did you make the last purchase? A. Well, I don't know just when I did make the last purchase.

Q. Can you come pretty close to the date? A. No, I don't know that I can; I don't think I ever purchased more than—there might have been 25 kegs to start on, or 10 kegs; there might have been three or four purchases; I can't say positively.

6786 Q. You haven't any idea of how many purchases you made? A. Not unless I looked over my records.

Q. When did you go out of business? A. In 1907.

Q. What month? A. I think it was in March.

Q. 1907? A. Yes, sir.

Q. Did your mine fail? A. No, sir.

Q. Have you paid your creditors? A. Yes, sir.

Q. Have you paid the Buckeye Powder Company? A. Every cent we ever owed them.

Q. At the time when you went out of business, had you paid them? A. If we didn't directly, it was a little afterwards; we are not out of the business yet.

Q. What business are you in yet? A. Our charter was never cancelled.

Q. Then your statement that you went out of business—— A. I said that we ceased to operate.

Q. Had you paid your bills when you ceased your operations in 1907? A. If we didn't, we did immediately afterwards.

Q. Were you under contract. The Greenview Coal and Mining Company was under contract, as you said, with the du Pont Powder Company during the years 1903 to 1909? A. I think so.

Q. During all of those years? A. I think that we had a contract with them every year.

6788

Mr. Abbott: (After objection). The witness stated on his direct examination, that he had a contract with the du Pont Powder Company, and that it was that contract that Mr. Waddell endeavored to get him to break.

A. I didn't say he tried to get me to break it; I said he said he would stand between me and any trouble I might have on account of this contract.

Q. What did you think he meant? A. That the contract wasn't binding upon me—

6789

Q. He didn't regard the contract as binding, and endeavored to get you to break it? A. That I wouldn't have any trouble if I used his powder.

Q. You understood he wanted you to break your contract with the du Pont people and buy powder of him, and that he would stand between you and trouble? A. Yes, sir; if I took any of his powder and they sued me, he would defend me.

Q. And you didn't accept the proposition, except buying a few kegs of powder? A. I tried his powder.

Q. And that was 40 or 50 kegs? A. I can't say, but I think it was more than that.

6790

George W. Hatch—Cross

Q. How much? A. I told you that I possibly got 25 kegs, and then two or four hundred kegs.

Q. You broke your contract for a while? A. No, I didn't.

6791

Q. Why was it, after you first tried the first few kegs, and you found it didn't quite satisfy you, you bought 400 kegs? A. Mr. Waddell took a sample of the powder and told me, if the powder didn't give satisfaction, he would make me a powder that would do the work. We tried different grades of his powder.

Q. And you took a large quantity of powder from him with that understanding? A. What understanding?

Q. On the understanding that you have just stated, that it would do the work? A. Yes, sir.

Q. And you didn't make any test of the powder yourself? A. No, sir.

Q. What information you had regarding it, came from the miners? A. Yes, sir.

6792

Q. When did you get this information from the miners that you speak of? A. As they used the powder.

Q. In what mine were these miners operating? A. The Greenview Coal and Mining Company's mines.

Q. Your mines? A. Yes, sir.

Q. Didn't you state in your direct examination, that you only bought a few kegs of powder of the Buckeye Powder Company and tried it and didn't find it satisfactory because the miners wouldn't take it, and that you didn't buy any more? A. Only one time.

Q. Just answer that question, please. (Stenographer repeats the question). A. Why, I considered that if I bought 600 kegs it was only a few kegs, compared with what I used; we gave this powder a thorough trial.

Q. Was anything said by these miners that this powder was the right grade or grain? A. By the miners?

Q. Was anything said by these miners that the powder wasn't the right grade or grain; did they say anything about the size of the powder not being right? A. I don't think they said anything about the size of the powder.

Q. You testified, did you not, in the case of The United States of America, Petitioner, against The E. I. du Pont de Nemours Company, et als., in a suit pending in the United States Circuit Court for the District of Delaware; do you remember such a suit as that? A. Yes, sir.

6794

Q. As a witness in that case on behalf of the defendant—you were a witness on behalf of the defendants, weren't you? A. Yes, sir.

Q. Did you state in your testimony at that time, anything concerning the size of the powder as being the only reason why this powder was not satisfactory to you? A. I might have; I couldn't say; I don't remember what my testimony was. The gist of it was, that the powder didn't give satisfaction and didn't do the work.

6795

Q. Did you state at that time that the powder didn't give satisfaction? A. I think I did.

Q. I will read to you the following language taken from your testimony as reported, and ask you to state whether or not it is correct. The following question was propounded to you: "Was there anything said about prices in that conversation?" Do you recall such a question as having been put to you? A. I think, possibly, that is true.

Q. What did you say in answer to that question? A. Well, I don't know what question you are asking about.

Q. I am asking you about that question. A. I

6796

George W. Hatch—Cross

don't know who the conversation was with, or anything about it.

6797

Q. I will read you the following answer: "I don't remember whether we talked about the prices or not; I think possibly he said they lost money; anyway, he read the price list, and we tried this powder, but it didn't work. Is it right I should go ahead and state this. Ques. Just state it in your own way. Ans. He sent what we call "F" powder. The miners, part of them, liked it very well, but we found it too strong to use where they were mining the coal, it shot the coal all to pieces." A. I think that is correct, that is, in a measure, correct.

Q. Did you testify that way before? A. That is true, I think that is correct in a measure.

6798

Q. You next said: "Ques. Did you use up the Buckeye powder you bought? Ans. No, sir, we didn't. Ques. What did you do with it? Ans. I can't state now whether I returned any of it to the mill or not, but Mr. Waddell authorized me to ship part of the powder I bought, or the powder I had on hand, that is, the "C" powder, to the Manchester Coal Company up in Petersburg." Is that true? A. Possibly that is true.

Q. You testified that way? A. I think I did; I can't say positively.

Q. If you testified that way, was it true, that whatever complaints were made to you were made because the powder wasn't of the right sized grain? A. The complaints were made on account of the powder not shooting they couldn't shoot coal with "C" powder, it wouldn't shoot the coal out; that is, it wouldn't blow the coal out; and Mr. Waddell, I think, sent me the "F" powder, and they tried it, and it didn't shoot the coal—and they tried it, and it shot the coal too hard.

Q. How did you know that? A. I know it from the way the coal screened; I kept a check on my coal.

Q. That is one fact you didn't get from the miners? A. Sure; they didn't care which way it shot the coal.

Q. Did you learn that from the miners, or did you make your own investigations and determine that fact? A. We made the complaint to the men that they were shooting the coal all to pieces, and they claimed it was the fault of the powder, and they wanted what was called single "C" powder.

6800

Q. How do you know they wanted it? A. They did want it.

Q. You say, if I understand you, that they called for another grade of powder than they were using? A. They wanted du Pont powder.

Q. Oh, they wanted du Pont? A. Yes, sir.

Q. Then, which position are you going to take? You said they called for another grain of powder, and you said they asked for single "C?" A. I said—

Q. Which position are you going to take? A. I meant du Pont—

6801

Q. You said they called for another grain, and then you said they asked for single "C;" which do you want us to understand; where do you stand? A. What they said was—

Q. I want to know what position you are going to take; you said they called for another grain of powder, and you said they, asked for "C?" A. I said or meant, du Pont single "C" powder.

Q. Did you buy any powder for any other mines? A. I think I tried it, and used some of it in the Middletown mine; I couldn't say whether I bought that powder myself or not.

Q. Did you buy any of it for any other than the Middletown mine? A. I may have bought some in the other mines, but I can't say whether I did.

6802

George W. Hatch—Cross

Q. Did you buy it for still another mine? A. No, sir.

Q. Those were the only mines? A. I didn't say I bought it for those three mines.

Q. You are not going to put yourself into saying anything not absolutely true? A. I can't say that I bought it; I might have bought some for the Greenview Mining Company and I might have bought some for the Middletown.

6803

Q. You didn't shoot any of the powder yourself? A. No.

Q. You are not a practical miner? A. No, sir.

Q. You have nothing to do with that part of the business? A. Nothing, only to go down the mine and inspect the mine and inspect the shots—

Q. If you are not a practical miner, how could you do that? A. I know what kind of coal it is when it is shot to pieces or when it lumped, as far as that is concerned; I have general supervision of the mines—

Q. You are not a practical miner? A. No, sir.

6804

Q. Do you know anything about how the shots are loaded and fired? A. Yes, sir, and drilled.

Q. Do you know that just intuitively? A. Just from seeing the holes drilled and the charges put in, and about the number of inches they use in a shot.

Q. And you know that without being a practical miner? A. Yes, sir, I do.

Q. Well, I think you are a wonderful man. A. I am glad you have that good opinion of me; thank you.

Q. Now, I will ask you to state whether you know how much Buckeye powder was placed in any one shot that was fired by any miner in your mine? A. Some of them used 60 inches, and some of them would use 30 inches, and they tried to say—I talked

with them about using this powder and asked them if they used the same quantity as they used of the du Pont powder, and if they gave their shots a chance to work in places where they drilled in on the solid and places where they cut and gave the powder a chance to work.

Q. What did they say to that, what you did or said? A. Well, certainly, wherever they put a cut in the piece of coal and gives it a chance to work—it works better on the solid, the same as the du Pont powder would; that's what I was there for. As far as Mr. Waddell's powder was concerned, there was no reason why I shouldn't use it, if I could buy it for less money.

6806

Q. You were under contract? A. Well, if I wanted to make a new contract when that expired—

Q. During the pendency of the contract, you didn't want to break it? A. I was trying the powder.

Q. Did you see with your own eyes any single shot loaded with Buckeye powder. A. I think I did.

6807

Q. You think you did? A. Yes.

Q. Well, now, you tell us how that shot was made up and loaded. A. It was made up in a cartridge; some, they would take common newspaper, and some of them had cartridge paper, and they would take a stick of the size,—of not quite as large as your wrist, and they made a cartridge, and they would put their fuse in, sometimes in the lower end, and sometimes they would put the fuse in the upper end. Then that cartridge was tamped with the clay from the mine, with the fuse left sticking out; sometimes they used a squib instead of a fuse; and if you want to know how the holes were drilled, I can tell you.

Q. You have wandered again very far from the

6808

George W. Hatch—Cross

question I asked you. I asked you if you saw any particular shot fired; you have been telling what you saw sometimes, and what you didn't see. A. I saw several.

Q. Describe one shot.

Q. Describe one shot. A. I told you some of them were drilled in the solid at different angles, and some of them were drilled the other way where they put clay in, and I have seen them both fired, and I have seen them charged, and I have seen the coal after the shot was fired. I went into the room the next day.

6809

Q. Wandering off again. Why is it you won't tell me about a single shot you saw loaded and fired with Buckeye powder? A. I say I have seen more than one shot.

Q. I want you to tell me about one shot. ?A. I have just told you about one.

Q. I didn't hear it. A. Just tell you the one?

Q. Yes. A. A. I saw a shot put in the solid with Buckeye powder.

6810

Q. Describe it in detail. A. I don't know how you want me to describe it any different to that; if you go into the miner's room—

Q. I don't want any speech—I asked you for a description of this particular shot you saw fired, and I would like to have you confine yourself to that. A. I couldn't see it fired.

Q. You said you saw it fired. A. I seen it loaded.

Q. What did you see? A. I seen the man make his cartridge and load it with the powder, and put it in the hole he had drilled, and tamp it; I didn't see the man go in there and fire it.

Q. How much powder did he put into it? A. They put in different numbers of inches in there.

Q. How much do you say was put in? A. All

the way—some of them put in only 18 inches, according to what shot they had to shoot.

Q. Did you see the du Pont powder loaded in the same way? A. Yes; plenty of them, which have been loaded and tamped.

Q. Now, I am going to ask you once more, because I consider it important. I want you to tell me of any single shot you ever saw loaded with Buckeye powder, and just exactly how that shot was loaded. A. Well, I am telling you several. I can't tell you of any single one; I can tell you of several that were fired.

6812

Q. Well, I am going to keep asking you till you tell me, if I stay here all night. Tell me of a shot that was fired. A. I can't tell you of a single one; I have told you several.

Q. Now, Mr. Hatch, I want to be fair with you if it is possible. I am going to try to be; and I will ask you if it is not a fact that at this time, the matter being so far distant, in time, and from the further fact that you did not make any notes of what transpired, that you have no distinct recollection of any particular shot that was fired with any particular kind of powder, but that your testimony and recollection goes in a general way to shots you have seen fired with all kinds of powder? A. I don't know how to answer that question direct; if you will let me answer it in my own way, I will tell you.

6813

Q. You can answer that yes or no, and then make such explanation as you please. (Stenographer repeats the question). A. I don't know how to answer that question. You got it in so many ways, I don't know whether I could answer it yes or no.

Q. You are not able to? A. I don't know how I could.

Q. Well, you'll answer the question? A. Well, I

6814

George W. Hatch—Cross

want to be truthful, and you are going at me so, that I want to be careful. I don't understand the question to answer it; I don't know what you are after.

Q. I don't have to let you know what I am after. I want a direct answer. I have been trying all kinds of questions, and I thought this one, probably, would give you a chance to say what I want.

6815

A. You want to know whether it hasn't been so long, that I don't remember what kind of powder I seen the shots fired or loaded with? A. You got pretty near the idea. A. My men were testing this powder, and I wanted to know whether the Buckeye powder would give as good results as the du Pont powder; for that reason I tried to find out how it shot the coal, and whether it worked as good in the coal as the du Pont powder.

Q. Yes. A. That's the only thing I can say to you.

6816

Q. Proceed to tell just how you attempted to find that out. I found it ou by the men taking the powder down in the mine and trying it, and they claimed the powder wasn't working, and I asked Mr. Waddell, I think possibly I wrote him, or told him,—I don't know whether I wrote him or seen him in person. I met him on more than one occasion and told him this powder wasn't strong enough—it wouldn't shoot the coal; and he sent me what they call the "F" powder; and we tried it and it blowed the coal to pieces, it was too strong. The miners didn't like the Buckeye powder as well as they did the du Pont powder, that is, it didn't work as good in that coal; possibly, it might work just as well in some other coal.

Q. Did you see the "F" powder used, which you say you saw used, or did you take the miners' word for it? A. They were shooting the coal to pieces,

and we didn't get the lump coal, and I asked them what was the trouble.

Q. I am asking you what the trouble was then. Do you know, of your own knowledge, whether any other powder that you have ever used or seen used, has been unsuccessful at times in producing the best results? A. Why, certainly; you might find the same thing with the du Pont or any other powder; but when you get a grade that does the work, that's the grade you got to have for your coal.

6818

Q. Did you ever see coal blown to pieces with the du Pont powder? A. Yes, sir,—if they used too strong a powder.

Q. That brings me now to where I wanted to get a long time ago. Did you ever see any shot fired with the Buckeye powder that produced the results you have testified to? A. I have seen the shots and the charge made and put in the hole and ready to fire, and I have seen the shot after it was fired and the results from it.

Q. State how that particular shot was loaded and fired. A. Those particular shots I looked at were loaded and fired—

6819

Q. I must stop you there; you are talking about a lot of shots, and I am asking about that shot you referred to a moment ago. A. There was more than one, but I couldn't tell you one shot. I went down and made a general inspection of the coal.

Q. Now, when the coal was blown to pieces, as you say it was, by the Buckeye powder, did you make any change in the manner of using that powder? A. Yes, sir.

Q. You reduced the charge? A. Yes, I told my men to do it.

Q. Did they obey your orders? A. I think they did.

Q. Do you know they did? A. I didn't see any shot fired; it is an unfair question for you to ask.

6820

George W. Hatch—Cross

Q. If you would answer my question, you would probably find it was not as unreasonable as you think. I don't think you are unreasonable, but I know something about mining.

6821

Q. Tell us about the shot that you saw fired after the one that you saw blow the coal all to pieces, and tell us just how much less powder was used in the shot than was used in the former shot. A. When I talked to the men—I will have to answer it this way—I told the men to give it a good fair trial always, and when they blew this coal to pieces, I said, "You are using too much powder, don't you think you are?" Those questions naturally came up: "Give your shot a little better chance, don't get your heel so heavy;" or something like that; and they would say they give it all the chance they could give it, and they didn't want any more of that powder. I don't know, but at one time we were out of du Pont powder, possibly, and the men probably used part of a keg, and as soon as the other powder came in, we gave them that. They naturally—

6822

Q. Do you consider that an answer to my question? A. In regard to giving it a chance,—I think we gave it all the chance we could give it; at least, the men said so.

Q. Isn't a fact that you depended upon the reports you got from the men as to the use of Buck-eye powder? A. Not when they took this powder down and shot this coal all to pieces; when it ought to have made 60 per cent. and it didn't make more than 30 per cent., I wanted to know the reason, and they said they couldn't use the powder.

Q. Well, you didn't answer my question. Where did you get the information upon which you based this conclusion you have stated? A. I could see it in my coal; that was my information.

Q. Did you measure it? A. Well, I screened my coal, and it easy enough for a man to know when the miners are shooting the coal to pieces.

Q. And that's your answer, is it? A. Yes.

Q. Isn't it a fact, that if the miner wanted to, he could shoot your coal all to pieces in order to discredit a powder? A. That is naturally sure, if he had anything in for the Buckeye powder, or if he was interested in any other way in any other powder; certainly, if he wanted to. He would be a fool, though. I don't know who was hired, though; they might have had some fellow hired, but I don't think so. I used considerable powder and seen it used.

6824

Re-direct examination by Mr. Katzenbach:

Q. How many miners in your mine used Buckeye powder? A. Well, I couldn't say just the number now; quite a number.

Q. Approximately, how many to your knowledge? A. In the Greenview Coal Company's mines?

Q. Yes. A. Possibly half of the miners tried Buckeye powder.

6825

Q. How many miners or employees were there at the time Buckeye powder was used? A. About 125 to 140 miners; possibly, that's a little bit big; I will say between 100 to 130 or 135.

Q. The Greenview Coal Company which you have spoken of, what kind of a concern was that, a large or a small concern? A. The one that failed?

Q. The one you spoke about? A. That company was very weak, a small company; that was a company that was very weak.

Q. Was it a corporated company? A. Not at that time; they are at the present time; it's changed; they are called the Greenview Mining Company.

Q. How many men did the Greenview Coal Com-

6826

George W. Hatch—Redirect—Recross

pany employ at that time? A. Well, while I was with them?

Q. Yes. A. I think they had about 60 men at one time.

By Mr. Taylor:

Q. The question was, whether it was a larger or small company? A. It was a small company.

6827 *Re-cross-examination by Mr. Abbott:*

Q. You stated you used between five and six thousand kegs of powder a year at the Greenview Coal and Mining Company? A. I think along there,—about 5,000 kegs, maybe six.

Q. What do you call a small company? A. No; the Greenview Coal and Mining Company.

Q. Used between five and six thousand? A. Yes, sir, as high as 6,000 kegs one year.

Q. How many kegs did the Greenview Coal Company use? A. I couldn't say

6828

Q. Have you any idea? A. Well, I wasn't with them.

Q. You stated it was a small company; tell us how much powder they used; you must know the one thing if you know the other? A. I think it was—in fact, about the highest they could have averaged was, possibly ten kegs a day.

Q. Ten kegs a day? A. Maybe, not quite that many, that is, for a short time, a very short time.

Q. How long a time? A. Probably 60 or 90 days.

Q. How long were they in business? A. 1908—about two years, I think.

Q. Beginning when? A. I think they commenced operations,—they commenced the sinking in the fall of 1907.

Q. And continued until what time? A. I think

they went into the receiver's hands in,—I think it was either in 1908 or 1909.

Q. 1908 or 1909? A. Yes, sir, I can't say which year.

Q. Now, you stated that about half the miners in the Greenview Coal and Mining Company used Buckeye powder? A. A very short time, yes, to start with.

Q. To start with? A. Yes, sir.

Q. How long a time did they continue? A. A very short time.

6830

Q. Tell us how long? A. I think probably they got one keg.

Q. And they didn't use any more? A. Some of them didn't use that one keg.

Q. What did you do with the other Buckeye powder that you received, after these miners ceased using Buckeye powder? A. I tried to use it; some few of them liked it pretty well. I don't know whether you want me to say this. I think as you are going into details, you ought to be fair with me, and if we got different grades of coal in one mine, I ought to be able to explain.

6831

Q. Go ahead. A. In some places we couldn't use the same grade of powder, and we had to use double "C" or single "C."

Q. Did that apply to du Pont powder as well as Buckeye powder? A. With some powders the miners weren't satisfied, and where they did use it and where they were satisfied, they shot my coal all to pieces.

Q. What was the total amount of Buckeye powder that you purchased? A. I can't tell you exactly.

Q. How many miners used Buckeye powder? A. I couldn't tell you exactly.

Q. How many miners did you have in your mines? A. Well, sometimes we had more and sometime less.

2277

6832

George W. Hatch—Recross

Q. How many miners did you have in your mine at the time you were using Buckeye powder? A. I would say between 120 and 135 men.

Q. What percentage of that hundred to 135 men, used Buckeye powder? A. Possibly half of them tried it.

Q. How long did that half continue to try Buckeye powder? A. I couldn't say positively; some used one, or part of a keg, and brought the other back; some of them would get more, and some wouldn't.

Q. During a period of how many weeks or months did you buy Buckeye powder? A. I couldn't say positively at this day.

Q. How long would it take a miner to use one keg of powder? A. I would have to know what miner that was to answer that question.

Q. Based upon the knowledge which you have testified here you have of the operations of miners in your mines— A. And what kind of a place he was in.

Q. I am asking you to base it upon your knowledge, how long it would take a miner to use a keg of Buckeye powder? A. Some of them two days, and some of them three days, and some it would be more, according to the sized shot he put in.

Q. How long would it take 60 men to use 1,500 kegs of powder? A. That is owing to the way they shot the powder.

Q. I am asking you as an expert, as you claim to be. A. I don't claim to be an expert.

Q. You do not? A. No.

Q. You said so. A. I don't think I did.

Q. You said you know how to shoot it, and that you went down in the mines and you followed it up and know all about it. I would like you to state how long it would take 60 men to use 1,500 kegs of powder. A. 60 men?

Louis Blank—Direct

6835

Q. Yes. A. I say, I have seen holes drilled and fired; I am not an expert.

Q. Will you answer the question? A. I have told you how long it would take; it is according to the way they shoot it. We would use, probably, as near as I can remember, with a hundred men—well, a man would average about two kegs to a pay.

Q. What is that. A. About 12 to 13 days' work.

Q. 13 days' work is a pay? A. Yes, sir.

Q. You say they would average about two kegs a pay? A. About two kegs, yes, sir. 6836

Q. Then, it would take one man about 13 days to use two kegs of powder, wouldn't it? A. Yes, sir, sometimes one man would use three kegs and sometimes one.

Q. But on the average, one man would use two kegs of powder in 12 or 13 days; is that right? A. Yes, sir, that's right.

Deposition of LOUIS BLANK, a witness produced on behalf of the Defendants, being duly sworn, read as follows: 6837

Direct examination by Mr. Katzenbach:

Q. Mr. Blank, where do you live? A. I live in Limestone.

Q. That is a township in Peoria County? A. They call it the Plank Road.

Q. What business are you engaged in? A. Coal mining every day, running a little team bank with eight or nine men now; what they call a small place.

Q. Have you any partner in the business? A. Yes, sir.

Q. Who is it? A. Fred Fisher.

Q. What is the name of the partnership? A. Fisher and Blank, they call it.

6838

Louis Blank—Direct

Q. Fisher and Blank, or Blank and Fisher? A. They change it around sometimes.

Q. How long have you been a miner of coal? A. Oh, about 26 or 27 years.

Q. At what age did you commence working in a coal mine? A. I started in when I was 12 years old; I am 39 now.

6839

Q. Have you done anything else during your life other than mining coal since you were 12 years of age? A. I have driven mule off and on, but for the last ten years I ain't.

Q. In the mining of coal, have you used black blasting powder? A. Yes.

Q. State in what way you have used black blasting powder, that is, how you used it. A. In the shots or in the cartridges, or loose?

Q. Yes. A. Some puts it in charges loose, and some in cartridges; I have used it both ways.

6840

Q. Will you state in your own way, just how you used black blasting powder in the mine, giving the details of what you have to do to use it? A. Maybe I will have a shot 3 feet square and 3 feet long; that's what they call a block; I will have a six foot chance behind that; that's what you call a big shot, four or five feet thick. Maybe, I will have another one 6 feet long, and only 3 feet thick. Well, you got to gauge them shots according to your knowledge of a 3 foot hole, so it takes two feet of powder—

Q. I think you misunderstood my question. I want you to tell me just what you do in a mine in order to use powder? A. In order to use it?

Q. When you use it; before you use it, what do you do; what do you have to do to prepare for the use of it? A. If you use a charger, you get your charger and scrape it, and scrape out your hole and put it in a charger. You know what your charger

holds, eight or nine inches, and some ten, and if you want to put it in with a cartridge, you make it up with the cartridge and clean your hole out and put the fuse in——

Q. Have you ever done any drilling of holes? A. Yes.

Q. Now, after you drilled the holes, state specifically what you have done, step by step. A. Clean the dust out of them and get your powder, and if you are going to put in a cartridge, make your cartridge and put your powder in and tamp it up.

6842

Q. Between the years 1903 and 1909, where was your mine located? A. They call it Rocky Glen. It's worked out now; it ain't working any more.

Q. Between the years 1903 and 1909, did you use any blasting powder known as Buckeye powder?

Q. Between the years 1903 and 1909, did you operate any mine? A. Yes, that small place.

Q. Which you called Rocky Glen Mine? A. It had no name; we called the place Rocky Glen; it went under Blank and Fisher.

Q. Who bought the black blasting powder for use in your mine? A. Well, I would buy it.

6843

Q. Did you buy between the years 1903 and 1909, any black blasting powder known as Buckeye powder? A. Yes.

Q. About what time, to the best of your recollection, did you buy that powder? A. I think it would be—they run five years, and Jones was the first agent we bought from, so it must have been around 1904, or along there, and they run quite a while after, and we never got any of them; it must have been 1904, I guess.

Q. How much of the powder did you purchase first? A. I think it was five kegs.

Q. Did you use yourself in the mine any of that powder? A. Yes, sir, all myself; me and Fisher, my partner.

6844

Louis Blank—Direct

Q. State what you did with the powder, and what results you observed from the use of it. A. Well, it didn't work for us.

Q. State exactly what you did with it. A. We used it just the same as we would the other powder, and give it the same chance as the other powder.

Q. Well, how did you use it; just describe how you used it in your mine. A. Just the same as I told you before.

6845

Q. Well, tell it again. A. I think we tried it just the same as the other powder; the way powder is used in the bank; the same as any man would use it.

Q. What results did you see from the use of Buckeye powder? A. Well, we used five kegs of it, and I didn't think it was as good powder; it didn't work like the other powder did.

Q. State how it worked. A. We expect it to blow a shot out, and we didn't get the results out of it, what we thought we ought to have.

6846

Q. State what results you did get.

Q. Describe just how the use of Buckeye powder affected the coal. A. Well, we didn't think it was as strong as the other powder, and didn't cut up and down like the other powder did; it just blowed back and wouldn't cut up and down.

Q. Did you make any other purchase after these five kegs? A. Yes.

Q. We ordered five more. I told him we didn't want ten; he sent ten. I said we would try it again; he said they had a different man making powder now and it would run regular.

Q. Who said this? A. Jones.

Q. Do you know who Mr. Jones represented? A. The Buckeye Powder Company.

Q. Did you yourself use any of this second lot of powder? A. Yes.

Q. State fully, in detail, what was the result of that use by you of this second lot of Buckeye powder. A. He told us if it isn't satisfactory to us, we could send it back; and we used two kegs of it and sent word for them to come and get it back, we couldn't use it.

Q. What I want you to tell me is, what the results in the mine were of the use by you of this second lot of powder, what effect did the powder have on the coal, as you observed it? A. It wouldn't do the work, or it didn't work.

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Q. State what it did do or didn't do. A. We couldn't get the coal—it wouldn't make no coal; it wouldn't work in the coal; we couldn't use it.

Q. State particularly how it didn't work. A. Well, it didn't seem to have the strength; you put in what you would think of the other powder, and it seemed like it wouldn't have enough strength. Whether the powder was weak or not, I don't know; it seemed like it was weak.

Q. What became of the second lot of powder that you purchased of the Buckeye Powder Company? A. We sent it back.

6849

Q. After sending this back, did you afterwards purchase any more powder of the Buckeye Powder Company? A. No, never any more.

Q. That was the last you bought? A. Yes, sir.

Q. Mr. Blank, in a suit in the United States District Court of New Jersey, in which the Buckeye Powder Company is the plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants; in answer to a request or demand from the customers of the Buckeye Powder Company who were induced by the E. I. du Pont de Nemours Powder Company, or the other two companies which I have

6850

Louis Blank—Direct

mentioned, to cease or to abandon the purchase of powder from the Buckeye Powder Company, the name of your firm was given by the Buckeye Powder Company as one of the customers of the Buckeye Powder Company induced by the E. I. du Pont de Nemours Powder Company and the other two corporations, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not any agent or representative of these defendants, or any of them, ever induced you to abandon or to stop the purchase of Buckeye powder from the Buckeye Powder Company? (Objection overruled; exception allowed.) A. No, sir.

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Cross-examination by Mr. Abbott:

Q. How many kegs of powder did you use per year in your mine? A. I don't know exactly; you see we only run about—we hardly use any in the summer; I guess we use 75 to 100 kegs; through the summer months we didn't use many.

Q. Was your partnership, as you call it, a corporation? A. No.

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Q. You and Mr. Fisher conducted business between you without having any agreement between you as to what he should do, one thing or another? A. No, everything was all right what we did.

Q. You would approve of each other's cast? A. Yes, sir.

Q. Will you state again just exactly how many kegs of powder you purchased the first time? A. I think five kegs.

Q. How many the second time? A. I think he said ten kegs; he said if we didn't like it, he would take it back, and I couldn't do much with it.

Q. Did you state the second time that you bought the powder—when was the second time you bought Buckeye powder? A. Right after we used that first up; do you mean the year?

Q. What year, what month? A. I am not exactly sure; I think around 1904 or '05, I think.

Q. Did you buy it at any other time except those two periods? A. That's all.

Q. When was it you found it wasn't what it ought to be? Out of the first batch? A. Yes, sir, it didn't work right.

Q. Some worked good? A. Some of the kegs, yes.

Q. Some were good? A. Yes, sir.

Q. Isn't that the case with all powder; some works good and some doesn't? A. Well, it's expected to run regular.

Q. Have you not had some experience with du Pont powder? A. Yes, sir.

Q. Have you ever found that du Pont powder didn't work satisfactorily? A. It runs regular, the grain does, unless you get a spoiled keg, and you don't want to use it.

Q. You don't? A. No.

Q. But you have seen that with the du Pont powder? A. Yes; that got wet or something.

Q. But you have seen du Pont powder that wasn't right, and sent it back? A. Not batches, only a keg.

Q. One keg? A. A keg or two that got wet out of a batch.

Q. In every batch? A. Not every batch.

Q. Isn't it a fact, that your experience with Buck-eye powder is no different from your experience with du Pont powder, so far as now and then having bad results? A. It never worked right out of what we used. Maybe a keg or two worked right, but the rest didn't.

Q. Some did work right and some didn't? A. No, the more we tried the worse it got.

Q. But answer my question; some of it worked

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Louis Blank—Direct

right and some didn't; isn't that what you say? A. Oh, yes.

Q. Is that what you say? A. Yes.

Q. Who asked you to come here?

Q. (The stenographer repeats the last question asked by Mr. Katzenbach.) Do you remember that question? A. I remember it now.

Q. Do you understand it? A. Yes, sir.

6857

Q. What do you understand by it? A. If anybody wanted us to take du Pont powder or Buck-eye powder.

Q. What else do you understand by it, or is that all? A. Yes; we got all our powder where we pleased, and whatever worked the best; that's what we did; if it worked all right, we might have stayed with them; maybe it worked all right other places, as far as I know.

Q. Did you ever hear any such question as that put to you before? A. About what?

Q. Similar to the one just read to you by the Commissioner? A. No.

6858

Q. Do you know all the persons whose names have been read to you there, and corporations? A. No.

Q. Do you know all the persons who are their agents and representatives? A. No, only Mr. Moffatt, that's the only one.

Q. Then, the only man you had in mind as a representative of all of these gentlemen and corporations and associations when you answered the question, was Mr. Moffatt? A. Well, I know we bought our powder off him.

Q. He was the only man you had in mind when you answered the question? A. We bought the powder off them?

Q. Do you understand? A. Yes.

Q. Then, do I understand you to say he was the

only man you had in mind who was the agent of any of these parties when you answered that question? A. Yes, sir.

Deposition of EDWARD MARSTON, a witness produced on behalf of the defendants, being duly sworn, made as follows:

Direct examination by Mr. Katzenbach:

6860

Q. Mr. Marston, where do you live? A. Half a mile from the city limits, on the extreme end of Lincoln Avenue.

Q. What business are you engaged in? A. Coal mining.

Q. How long have you been engaged in the business of coal mining? A. The spring of 1902.

Q. Had you had anything to do with the mining of coal prior to the year 1902? A. Yes, sir; I have done nothing but mine coal all my life.

Q. When did you commence to mine coal? A. When I was nine years old.

6891

Q. How old are you now? A. 47.

Q. Between the years 1903 and 1909, what coal company, if any, were you interested in? A. With the Fair Oaks Coal Company.

Q. Where were the mines of that company located? A. Out west of the city here, about a mile and a half.

Q. Was that a partnership or a corporation? A. A partnership.

Q. Who were the partners? A. Myself and Mr. Walting and Mr. Williams.

Q. Who purchased the supplies for the Fair Oaks Coal Company between the years 1903 and 1909? A. I did.

6862

Edward Marston—Direct

Q. Did you use black blasting powder in the mines of the Fair Oaks Coal Company? A. Yes, sir.

Q. Have you had any experience personally with the use of black blasting powder? A. Yes, sir, 28 years.

Q. 28 years' experience? A. Yes, sir.

Q. State how black blasting powder is used, or how it has been used in the mining of coal by you?

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A. In the first place, you drill a hole in the coal, and then you make a cartridge and put your powder into that, into the hole and tamp it up. Now, they use a fuse all over, but when I come they used squibs.

Q. You would put that in and tamp it up? Since you have been a partner in the Fair Oaks Coal Company, have you personally used any black blasting powder? A. Yes, sir.

Q. Between the years 1903 and 1909, did you make any purchases of black blasting powder, know as the Buckeye powder? A. Yes.

6864

Q. Of whom did you purchase that powder? A. Of the agent of theirs by the name of Pepperd.

Q. An agent of whom? A. From the Buckeye Powder Company.

By Mr. Abbott:

Q. How do you know he was an agent of the Buckeye Powder Company? A. Because he came there and represented himself as an agent of the company.

Q. Who told you he was? A. He told me.

Q. He told you he was an agent? A. Yes, sir.

Q. Did you give this gentleman, Mr. Pepperd, any order for powder? A. Yes.

Q. Did you have the powder delivered to you which you had ordered? A. Yes, sir.

Q. Whom did you say, what company did you pay for this powder? A. Paid Mr. Waddell, in his office right here on Main Street.

Q. Do you know what connection Mr. Waddell had with the Buckeye Powder Company? A. No, sir, I know the offices were there, and he was with the Buckeye Powder Company.

Q. How many kegs of Buckeye powder did you purchase? A. 75.

Q. Do you recall about the time you purchased it? A. I am not sure whether it was in 1905 or 1906; it was the fall of one of those two years; I am not sure which.

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Q. 1905 or 1906? A. Yes, sir.

Q. After you purchased this Buckeye powder, did you yourself use any of it in the mines of the Fair Oaks Coal Company? A. Yes, sir.

Q. State what you did in the use of this powder; in other words, how you used it. A. Well, I used it the same as I did any other powder; I prepared my shot and put in the same amount of powder, because it had been represented to me as just as good as we had formerly used, and it was 10 cents a keg cheaper, and that's the reason we took the powder, with the 10 cents a keg, it was saving money to us, and we might as well save that if we could; but we prepared the shot just as carefully as we did with the powder we were using before, but the powder didn't seem to do the work.

6867

Q. State, Mr. Marston, the various steps that you took in the use of Buckeye powder. A. In using it?

Q. Yes, yourself. A. Well, I took the same steps as what I have said with the other powder.

Q. Please state them. A. Prepared the shots, made the cartridge, tamped the hole up, fired the shot off, the same as we did with the other powder.

6868

Edward Marston—Direct

Q. Did you see yourself, what the results of the shots fired with Buckeye Powder were? A. Yes, sir.

Q. State what the results were that you observed. A. The results of the powder was, that it didn't work the coal as successfully as that formerly used; it would only come from where we drilled the holes; it would strike uphill over where the hole was, but it wouldn't come down.

6869

Q. State what effect that had upon the coal? A. It had this effect, that we had to go and prepare another shot the next day, and shoot the same shot twice.

Q. Why did you have to prepare a shot the next day? A. Because this one wouldn't do any good; it wouldn't blow the coal out so you could work it; it wouldn't come out; the coal was all as solid as before you shot it; then you had to prepare another shot to shoot it out.

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Q. Why did you originally purchase the powder, the Buckeye powder? A. As I stated before, because the price was 10 cents a keg cheaper, and it was represented to us as being as good as du Pont, by their agent.

Q. Did you, or did you not, use all of the kegs of powder which you purchased from the Buckeye Powder Company, in the mine of the Fair Oaks Coal Company? A. No, sir, we didn't.

Q. You did not? A. No.

Q. Do you know how much was not used, and what became of it? A. We had eight kegs left that the miners and ourselves, me and one of the other men mining coal at the same time, and all the miners working for us refused to use the powder any more, because it was detrimental to us; it didn't seem to have the same strength to work the coal as the powder we used. They insisted on getting the old powder back.

Q. After you made this purchase of Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company are defendants, in answer to a demand for the names of customers of the Buckeye Powder Company induced by these defendants which I have named, or by certain other persons and corporations which I will name, the Buckeye Powder Company has stated that the Fair Oaks Coal Company was a customer of the Buckeye Powder Company which these defendants, or the other persons or corporations which I will name, which was induced that is, the Fair Oaks Coal Company was induced to abandon the purchase of powder from the Buckeye Powder Company. The names of the persons and corporations given in this suit, are as follows: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and

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Edward Marston—Cross

Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. I now ask you whether any of these corporations or persons which I have named, or any agent or representative of these corporations, ever induced you to cease the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

6875 A. No, sir, they never did.

Cross-examination by Mr. Abbott:

Q. Do you know all the agents and representatives of the persons and associations and corporations whose names were just read to you by counsel for the defendants? A. No, sir.

Q. What particular agent, if any, did you ever see, representing any of these parties? A. I don't know that I ever saw anyone. We purchased our powder, whenever we got any, off Dooley Brothers.

6876

Q. Of Peoria? A. Yes.

Q. Who are Dooley Brothers? A. They are doing business on South Adams Street.

Q. Who solicited the business of you? A. We used to call up over the telephone and tell them to send out 25 or 50 kegs, whatever it might be; but usually it was 25 kegs we had.

Q. You have said that none of the agents or representatives of these people called upon you or induced you to buy Buckeye powder; how do you know that any person representing some of these people has not called upon you within the last ten years? A. I think I pretty near know; I done all the purchasing for the mine since we were in operation, and if an agent or representative of any firm should come in to do any business, and he come

in and saw one of the others, they would tell him to come and see me; they left it in my hands; no matter what line of business he came on.

Q. Nobody had been to see you about powder then, within that time? A. Nobody but George Pepperd.

Q. Nobody but George Pepperd? A. No, sir.

Q. No one has ever been to ask you to buy any powder at all except George Pepperd? A. No, sir.

Q. Any powder of any kind? A. Not of any kind, no, sir.

6878

Q. Do you know Mr. Moffatt, who represents Dooley Brothers? A. Yes, sir.

Q. Have you ever seen Mr. Moffatt within the last ten years? A. Yes; I saw him about once a month every month.

Q. Where did you see him? A. Well, in the line of business; sometimes at the office, sometimes at the mines; he would come out and bring small job lots of supplies, such as fuse that we needed, and he used to run around with a little rig for that purpose, because it was too expensive to send a team out, I presume.

6879

Q. Did he ever bring you any powder? A. Yes; when we have ordered single "C" and they wouldn't have the 25 kegs on hand, and we needed the powder right away, and he would run out with about five kegs in the rig.

Q. How long has it been since you have seen Mr. Moffatt; how long since the last time you saw him? A. In a business way?

Q. No, in any way. A. To-day.

Q. And how long before that? A. Well, I guess about two weeks ago I saw him.

Q. What transpired at the time you saw him about three weeks ago? A. He came to collect some money. I hadn't been in town to collect our accounts, and he asked me if I was all right.

6880

Edward Marston—Cross

Q. Did he show you a paper? A. No, sir, not at that time.

Q. When was it that he showed you a paper? A. Some other time, just prior to that.

Q. Would it be four weeks ago? A. About four weeks, if I remember right.

Q. What did that paper contain, if you remember? A. I forget exactly what it was, but it was pertaining to whether I had been induced to buy powder off any particular company, or whether him, 6881 or anybody else had coerced me into buying their or anybody else's powder and like that.

Q. What conversation did you have with Mr. Moffatt at that time about the powder? A. No conversation; he presented the paper and I signed the questions to the best of my knowledge.

Q. Did you read them? A. Certainly.

Q. Did you talk to him about them? A. What was the use of talking about them? No, sir.

Q. What did you do with the paper? A. Handed it back to Mr. Moffatt.

Q. Is he in the room at the present time? A. 6882 Yes, sir.

Q. How do you happen to know that you bought 75 kegs of powder of the Buckeye Powder Company in 1905 or '06? A. Because, as I stated before, experience is the best teacher, and we lost out by using that powder.

Q. How did you know about the time you bought this powder? A. I said 1905 or '06, in the fall of the year; I am not sure.

Q. Have you any data upon which to base your recollection in that matter? A. I presume there would be in the books?

Q. Have you looked it up? A. No, sir.

Q. You have not? A. No.

Q. You are just trusting to your recollection? A. Yes.

Q. You are sure you bought 75 kegs? A. I am not sure, but I know it was over 50 we bought.

Q. You are sure it was over 50? A. Yes, sir.

Q. Did you use—how much of that powder did you say you used? A. All but about eight kegs.

Q. Did you say how much you had paid for that powder when you were being examined by Mr. Katzenbach? A. I paid 10 cents a keg less for that powder.

Q. How much did you pay for it? A. I believe it was \$1.20. 6884

Q. That is a matter of opinion? A. And the other powder was \$1.30, and that is the reason we bought the powder, being represented as good a grade of powder as the other.

Q. I am trying to get you to answer my questions. What did you do with that powder,—use it all? A. We used it all but eight kegs.

Q. What did you do with the eight kegs? A. Returned them.

Q. To whom did you return them? A. Their agent. 6885

Q. It was Jones, then, you say? A. Yes.

Q. How does it happen you bought powder of one man and returned it to another? A. Pepperd had quit, and Jones took hold of it, and he was the one that came and got the powder.

Q. You say you made a payment on that powder to Mr. Waddell? A. Yes.

Q. What Mr. Waddell is that? A. He had an office up here on Main Street.

Q. Would you know him if you saw him? A. No, I only met him one time, but I would see the name on the receipt.

Q. You are not sure you paid it to Mr. Waddell? A. No, but that was the name on the receipt.

6886

Edward Marston—Cross

Q. Have you got that receipt? A. I may have it around home some place.

Q. Now, did you ever have any experience with any other kind of powder except Buckeye powder and du Pont powder? A. Why, sixteen or eighteen years ago, there was a powder they called the Laffin and Rand in existence here, and the American powder, I believe it was called.

Did you ever use either of those powders? A. Yes, sir.

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Q. How were they, satisfactory? A. Well, in some cases they were, and in some cases—

Q. And in some cases they were not? A. Yes, sir.

Q. Has your du Pont powder always been satisfactory? A. It has always given better results than any other powder we use.

Q. Where do you get your powder from now? A. Dooley Brothers.

Q. Do you know where it comes from? A. No, sir.

6888

Q. Do you know where it is made? A. No, sir.

Q. How is it labeled? A. I presume it's labeled "Du Pont" on the top of the keg.

Q. You don't know where it's made? A. No.

Q. How long have you been buying of Dooley Brothers? A. Since 1902, excepting this time we bought this powder of the du Pont.

Q. Did you ever use any Phoenix powder? A. I couldn't say.

Q. Isn't it a fact, that in the use of any powder of any brand, you will now and then have bad results from the use of that powder? A. Well, that depends upon the condition of the shot and how it's prepared.

Q. Then, isn't it a fact— A. But if a man uses judgment and carefulness in the preparing of a

shot, he will get good results from the proper grade of powder.

Q. If his judgment is always right, he gets good results? A. If the powder is right.

Q. But if his judgment is wrong, no matter what powder he uses, he gets poor results? A. Yes, sir.

Q. That applies to any powder? A. Yes, sir.

Q. And isn't it true, that the very best of miners will often make a mistake in their judgment as to how to drill a hole and how to charge it, and what slant to give it, and how much powder to put in it, and as a result, the most experienced miners will make a failure of the shot? A. That's true enough.

6890

Q. In the use of a new powder, one never used before, might it not be necessary to experiment with it awhile before you get so you could tell how best to use it? A. I think we gave it enough experiment.

Q. Answer my question. A. Certainly it would.

Q. How many men do you employ in your mine?

A. At that time we were employing about 18, through the winter months.

6891

Q. And how many kegs of powder did you use per year? A. From 75 to 125 a month.

Q. 75 to 125 a month? A. Yes, when business was going good.

Q. How many months do you run? A. From the first of September until about the first of March is generally the best of the months.

Q. About seven months, then, it was that you operated your mine. A. About six months we operate.

Q. How do you transport your coal to market? A. By wagon.

Q. You don't use the cars at all? A. No, sir.

Q. To whom do you sell your coal? A. Everybody that wants to buy it around town.

6892

George Westerby—Direct

Q. Dooley Brothers? A. No, sir.

Q. Did you ever sell to Dooley Brothers? A. Yes, we have sold some.

Q. Don't you pay your powder bills largely by coal? A. No, sir.

Q. You do not? A. No.

Q. And never did? A. Sometimes we do; they give us credit.

Q. In other words, you are very friendly to Dooley Brothers? A. No; only in a business way.

6893

Deposition of GEORGE WESTERBY, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Westerby, where do you live? A. Farmington.

Q. State of Illinois? A. Yes, sir.

6894

Q. About how far from Peoria? A. About 25 miles.

Q. What business are you engaged in? A. Not in any business just now, but I was running a coal mine up until a year ago.

Q. How long were you engaged in the coal business? A. Five years.

Q. Have you had any experience in the mining of coal yourself? A. Yes, sir.

Q. How many years have you had experience in the mining of coal? A. Well, I have been in this country since 1880, the same year Garfield was shot in, but I was a miner in the old country before I came here.

Q. 1881, July 2nd, President Garfield was shot. Since you came to this country you have been en-

gaged in the coal business up until a year ago? A. Yes, sir.

Q. Have you personally worked in mines? A. Yes.

Q. Personally? A. Yes.

Q. What kind of work? A. All kinds; I sunk mines and mined, and started right at the top and come right down to the bottom, and worked until five years ago, all my life.

Q. In your mining operations did you ever use black blasting powder? A. Yes, sir.

6896

Q. State what use you have put black blasting powder to, in mines, that is, how you use it? A. Both in coal and shooting rock. Not so much in rock, though, because it is not adapted for that kind of work.

Q. How have you used powder in coal mining work; state the different steps you have taken to use powder? A. In shooting coal off the solid and loading it after it has been mined, and drilling holes, and putting the charge of powder in, and what a man would do in shooting, you know.

6897

Q. After putting the powder in, what next? A. Tamped it up and put the fuse in and tamped it up.

Q. Have you had any experience in the firing of shots? A. Oh, yes.

Q. Between the years 1903 and 1909, were you operating any mine? A. Yes, sir.

Q. Where was that located? A. In Farmington.

Q. In whose name did you conduct business? A. In my own name, George Westerby.

Q. Who purchased supplies for your mine? A. Myself.

Q. Did you purchase black blasting powder for your mines? A. Yes, sir.

Q. Between the years 1903 and 1909, did you purchase any black blasting powder for your mines, known as Buckeye powder? A. One shipment.

6898

George Westerby—Direct

Q. From whom did you purchase that? A. Right from the company themselves.

Q. What company was it? A. The Buckeye Powder Company it was called.

Q. How much was that shipment? A. I believe it was a hundred kegs, I believe so.

Q. About when did you purchase it, to the best of your recollection? A. I have a question I would like to ask: Was there a man collecting money by the name of Foster for that company?

6899

Q. We can't answer that. A. That's all I can remember; we remodeled our house some time ago, and I had the books destroyed, and we took this out of the bank book, that we had paid \$100.00 to some Foster, and we judged that was for the powder; and that was December 31st when it was paid, 1907.

Q. Where are your books and papers now? A. What we have is right at home.

Q. After you purchased this powder of the Buckeye Powder Company, did you personally see any of the powder used in your mine? A. Yes, sir.

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Q. State what you saw done with it with your own eyes. A. Well, the men drilled their holes and put the fuse in, and charged it, and they had very poor results, very poor results. The men claimed, and I claimed myself, that the powder hadn't the strength to throw the coal out; that it worked up into the roof too much.

Q. What did you see the miners do with the Buckeye powder? A. Drill their holes, charge it, make the cartridges same as with any other kind, put it in the holes and fire it.

Q. After these shots were fired with Buckeye powder, did you yourself see the effects of the shot? A. Yes, sir, I was——

Q. State what you saw with your own eyes. A. I examined them myself; I was running my mine

myself, and I was the examiner, and I went down at six o'clock in the morning and examined the place in the mine before anybody went down, and I could see what the shots had done, and see the effect they had on the roof in every particular.

Q. State fully what you saw; what effect they had on the roof, and how the coal was, and everything about it. A. Most of the shots had caught the coal and cut up into the roof and damaged the slate, and it wouldn't throw the coal out; then they had to drill the holes again and it damaged the coal; it made the coal more slack; the powder worked more through the coal and damaged the coal and made it more slacky.

6902

Q. After this purchase of 100 kegs of Buckeye powder, did you ever purchase any more of the same powder? A. No.

Q. After you made this purchase of Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

6903

Q. What powder had you been using before you purchased Buckeye powder? A. Du Pont powder.

Q. State how the price of Buckeye powder which you bought, compared with the price of du Pont powder, which you had been using. A. The reason we purchased it, we had two men in the mine that said that if—they were trying this Buckeye powder; it was cheaper; some said, these two men, that it would work the coal just as well, and I purchased this shipment, and I couldn't be confident whether 100 kegs or 50 was bought, but it runs in my mind that it was 100 kegs; but the reason we bought it, the price had something to do with it; it was a cheaper powder; that was what induced us to try it.

Q. Mr. Westerby, in a suit in the United States

6901

George Westerby—Direct

6905

6906

District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company and others are defendants, the Buckeye Powder Company, in answer to a demand for a list of customers which the Buckeye Powder Company alleges that the du Pont Powder Company and the other defendants and parties named in the pleadings in the case, induced to abandon the purchase of Buckeye powder, your name is given as one of the customers of the Buckeye Powder Company which the du Pont Powder Company and the others, whose names I will give you, was induced to abandon or stop the purchase of powder from the Buckeye Powder Company; the names of the other defendants and persons in the suit which I have mentioned are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Lafflin and Rand Powder Company, Fairmont Powder Company, and Judson Dynamite and Powder Company. Will you state whether any of these persons or corporations which I have mentioned ever induced you, either through their officers or agents, or the individuals which I have named personally to abandon the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

A. No, not at all; they neither influenced or even spoke to me; not at all.

Cross-examination by Mr. Abbott:

Q. Do you understand the last question put to you? A. Yes, sir.

Q. Do you understand it fully? A. Yes, the sum and substance of the question is: Did they try to encourage me or induce me to buy the powder from them when I was buying it from the Buckeye Powder Company.

6908

Q. Do you know all the names of the persons that were read to you there? A. No; I heard the names, that's all. We have always dealt through their agents, though.

Q. You know these persons whose names you have heard read dealt with you through their agents? A. Yes.

Q. Who are the persons? A. The Dooley Brothers we have dealt with, except one carload we had shipped right from the factory.

Q. What factory? A. From the du Pont Powder Company at Chicago, I believe it was, and outside of that we dealt with Dooley Brothers.

6909

Q. In answer to this question, you had in mind Dooley Brothers as one of the persons you had dealt with? A. We simply went back to the Buckeye Powder Company.

Q. You have been dealing with them ever since? A. Yes, sir.

Q. And Dooley Brothers have never come to you and asked you to quit buying Buckeye powder? A. No, sir.

Q. When you testified regarding the amount of Buckeye powder which you bought, you had a memorandum in your hand, did you not? A. Yes, a

6910

George Westerby—Cross

date out of a bank book; just a date out of a bank book where my wife looked it up, yes, sir; and she thinks that is \$100.00 we paid for the 100 kegs of powder to that company.

Q. What date was that? A. We took it out of our bank book on the 31st day of December, 1907.

Q. You have testified that you bought the 100 kegs of powder, upon the information which you obtained from that bank book? A. Yes, sir.

C211

Q. And you wife thinks that must have been—
A. The payment for these 100 kegs.

Q. That was the powder that you received at the time you have stated, this 100 kegs of powder that you used in the way in which you say you have used it, and which produced the bad results you say were produced, is that right? A. Yes; we only had one shipment.

Q. Only one shipment? A. Yes, sir.

Q. And the powder that came from that shipment which you received on December 31st, 1907—
A. It might have been paid for.

6912

Q. That is the powder which you received and had the bad results? A. Yes, sir.

Q. You personally saw that powder used that you have now testified to? A. Yes.

Q. And it produced the results which you testified it produced? A. Yes, sir.

Q. Did anybody ever ask you to buy Buckeye powder? A. I told you we had two men in the mine that encouraged us to try it.

Q. Who were those men? A. One was Jack Picton and George—I forget his name, I forget the other man's name, only they called him "George" something.

Q. Where did Jack Picton live? A. I don't know at present, but I think he is living somewhere around Springfield.

Q. Where does George live? A. Merchant they call him, I don't know.

Q. Where does he live? A. I think he lives at Raperts; he is farming at present.

Q. Did anybody else ever induce you to buy powder, or recommend it to you? A. No.

Q. Who? A. No, sir.

Q. Nobody ever did? A. No, sir.

Q. You are sure of that? A. Sure.

Q. Did you know a man by the name of Newsem? A. Yes, Tom Newsem.

6914

Q. Where was he? A. He is a son of this Dick Newsem.

Q. Where did he live? A. In Farmington.

Q. What kind of business is he in? A. He was running mines for Dick Newsam; if it's the same Newsam you have reference to.

Q. Was he a miner? A. No, he was a pit boss, a mine manager.

Q. He was a manager of the Newsam Mine, was he? A. Yes, sir.

Q. Did you know him pretty well; you did, did you? A. Pretty fair; only acquainted with him, that's all.

6915

Q. He is a pretty competent man? A. I don't know whether he was or not, really.

Q. Do you know what sized powder you bought? A. It was "C" powder, I think.

Q. "C" powder? A. Yes; I believe we had 50 kegs of single "C," and I believe 50 kegs of double "C"; I believe so, but I won't be positive. I would like to state something else, if I can.

By Mr. Katzenbach:

Q. Have you make any mistake? A. No, sir.

Q. That's all.

6916

James Dalton—Direct

Deposition of JAMES DALTON, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Laffey:

Q. What is your name? A. James Dalton.

Q. Where do you live? A. Elmwood.

Q. What is your business? A. Coal miner and operator.

6917

Q. How long have you been engaged as a coal miner and operator of coal mines? A. Twenty-five years.

Q. Where have you mined? A. South of Elmwood for 25 years.

Q. There for 25 years? A. Yes, sir. I have always been South of Elmwood; for the last seven or eight years about two and a half miles of Elmwood, and the other time two miles away from Farmington.

Q. Were you engaged as a coal operator between the years 1903 and 1909? A. Yes, sir.

6918

Q. Operating in your own name? A. In my own name.

Q. James Dalton? A. Yes.

Q. What was your post office address? A. Elmwood.

Q. What State? A. Illinois.

Q. As a coal mine operator, did you use blasting powder? A. Yes, sir.

Q. About how much blasting powder were you using in your operations during the years from 1904 to 1908, inclusive? A. Two or three hundred kegs, I suppose; I don't know exactly; I never kept track of it.

Q. Two or three hundred kegs a year? A. Yes, sir.

Q. Who did the buying of the supplies, includ-

ing the powder, during the years I have named? A. I did, most.

Q. Did you ever buy any powder of the Buckeye Powder Company? A. Yes.

Q. What year did you make that first purchase? A. I don't know what year it was in; it was along about the last of their operations; I don't know what year it was; seven or eight, or somewhere around there; it must have been just before they went out of business.

Q. How much did you buy? A. I think 50 kegs. 6920

Q. Was your trade solicited, or did you give the order in? A. I came down on Main Street and got it myself.

Q. To the Buckeye Powder office? A. Yes, sir.

Q. Got it yourself? A. Yes.

Q. And, pursuant to that order, was the powder delivered to your mine? A. Yes, to the station, and we hauled it to the mine.

Q. Prior to this purchase of powder, what powder had you been using? A. We had been using some du Pont.

Q. Why did you change to the Buckeye powder? A. Because I got it cheaper than the du Pont. 6921

Q. Can you state what the difference in price was; that is, the difference you had been paying for du Pont and the price you paid for Buckeye? A. I can't exactly say how much, ten or fifteen cents cheaper.

Q. Ten or 15 cents? A. Yes.

Q. Did you ever have any conversation with any officer or agent of the E. I. du Pont de Nemours Powder Company relative to Buckeye powder? A. I never did.

Q. In a suit brought in the District Court of the United States at Trenton, New Jersey, in which the Buckeye Powder Company is the plaintiff, and the

4923

4924

E. I. du Pont de Nemours Powder Company, and the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, it is alleged in the declaration that the defendants, or some of the persons or companies named as co-conspirators, induced the customers of the Buckeye Powder Company to cease or abandon the purchase of powder from the Buckeye Powder Company, and in answer to a demand for a bill of particulars, made by the defendants for the names of the customers of the Buckeye Powder Company that were induced to cease the purchase of powder from the Buckeye Powder Company, the name of James Dalton is given as one of the customers of the Buckeye Powder Company that was induced to abandon the purchase of powder from the Buckeye Powder Company. The names of the persons designated as co-conspirators, are as follows: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, and the companies being: Judson Dynamite and Powder Company, Fairmont Powder Company, Laffin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, International Smokeless Powder and Chemical Company, Delaware Securities Company. You may state if any of the companies that I have named, or any of their agents or representatives, ever induced you to abandon the purchase of powder from the Buckeye Powder Company? A. They never did.

Cross-examination by Mr. Abbott:

Q. Do you know all of the gentlemen and corporations and associations whose names were just read to you? A. No, sir.

Q. Do you know all of the agents or representatives of those gentlemen? A. No, sir.

Q. Then, as a matter of fact, you don't know whether anyone has called upon you or has made some effort to induce you to stop the purchase of Buckeye powder? A. I know nobody ever did.

6926

Q. You know nobody ever did? A. Yes, nobody ever did.

Q. Yes; how do you know that? A. I know nobody ever did.

Q. How do you know it? A. Nobody ever spoke to me anything about it; I always did my own business.

Q. And it is only because nobody ever spoke to you about it, that you draw the inference that nobody ever influenced you? A. Yes, nobody ever spoke to me.

6927

Q. And it is only on that ground that you answered the question in the negative? A. Yes.

Q. Has this question ever been put to you by anybody else within the last few weeks? A. I didn't know anything about a lawsuit until two or three weeks ago, and Mr. What's-his-name come up—

Q. Who is he? A. That gentleman sitting there, Moffatt, came up with a paper.

Q. And you read the paper? A. Yes.

Q. What did he say to you when he handed you the paper? A. He said there was a lawsuit, and he read them papers, and I read it over, and he wanted me to sign my name to it.

Q. And you signed your name to it? A. Yes.

Q. And that's all you know about it? A. That's all I know about it.

Q. Have you any records in your possession to show anything concerning what price you paid for Buckeye powder? A. No.

Q. Or for du Pont powder? A. I think I paid \$1.25 for du Pont, or \$1.15, I don't know now.

Q. Upon what do you base your recollection? A. On the basis that I know I was getting the Buckeye cheaper.

6929 Q. How much cheaper did you get Buckeye? A. Ten or fifteen cents. I know it was much that much, anyway.

Q. And you paid \$1.25 for the du Pont? A. Fifteen or twenty-five.

Q. \$1.15 or \$1.25 for the du Pont? A. Yes, sir.

Q. How many times did you buy Buckeye powder? A. I don't know whether it was more than once or not; I wouldn't say; I did it until they quit business.

Q. You did it until they quit business? A. Yes.

6930 Q. When did you begin buying? A. I couldn't say; about the last year they run; it must have been, or something along there.

Q. Are you still in the mining business? A. Yes, sir.

Q. Do you still use black blasting powder? A. Yes.

Q. What powder? A. Western.

Q. You have been using it ever since, have you? A. Yes.

Q. And Western powder is manufactured where? A. The same place as the Buckeye powder was.

Q. I believe you stated on your direct examination, that the price you paid for Buckeye powder was the price at the station, Edwards' Station? A. No, at the office on Main Street.

Q. That was the price at the place of business?
A. Yes, sir.

Q. And you took it over there to your own mine?
A. No; they shipped it up; I gave them an order;
we had to cart it from the station.

Re-direct examination by Mr. Laffey:

Q. How long have you been using powder? A.
Oh, I guess it must have been seven or eight years.

Q. You are a practical miner yourself? A. Yes,
sir.

Q. I will ask you to state which was the better
powder, Buckeye or Western? A. I liked the West-
ern powder better than I did the Buckeye.

Re-cross examination by Mr. Abbott:

Q. As I understand you, you continued to buy
Buckeye constantly until they went out of business?
A. Yes, sir.

Q. And you went right on buying Western pow-
der after that? A. Yes, sir.

Witness called as Plaintiff witness.

Direct examination by Mr. Abbott:

Q. Mr. Dalton, you testified a moment ago when
you were on the stand before, while you were a
witness for the defendants, that you had used Buck-
eye powder from the time when you first began to
buy it in 1908, until the Buckeye Company went
out of business? A. Yes, sir.

Q. Did you after that use Western powder? A.
Yes, sir.

Q. It was made at the same place? A. Yes, sir.

Q. I will ask you to state whether or not you ob-

6934

Edward Shirkie—Direct

served any difference between the two grades of powder? A. Well, I thought the Western was a little stronger, that is all.

Q. How long did you continue to buy the Western powder? A. I am buying it now.

Q. Did you buy it the following year? A. Yes, sir, right along.

Q. Was the Buckeye powder, while you used it, satisfactory? A. Yes, sir, fairly.

6935

Q. Was it as satisfactory to you as the Western powder? A. Nobody couldn't tell much difference, as I know of.

Q. It was practically the same thing, was it? A. Yes, sir, I guess it was. It is a hard matter to tell.

Cross-examination by Mr. Laffey:

Q. Did you give more than one order to the Buckeye Powder Company? A. I think that was all; I don't know whether it was one or two; just before they went out of business, I know.

6936

Deposition of EDWARD SHIRKIE, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Shirkie, where do you live? A. Terre Haute, Indiana.

Q. And what business are you engaged in? A. Coal.

Q. As an owner and operator of coal mines? A. Yes, sir.

Q. Do you recall the name of the company known as the Indiana Fuel Company? A. Yes, I was the owner.

Q. Was that a corporation? A. Yes, an Indiana corporation.

Q. What office did you hold in that corporation? A. President and Treasurer.

Q. Can you tell me about the period of existence of the Indiana Fuel Company? A. No; quite a number of years.

Q. Was it in existence between the years 1903 and 1909? A. I am not sure about that; it was in existence up to about eight or nine years ago; we sold out to the Dearen Coal Company.

6938

Q. Then it was in existence during the years 1903 and 1904? A. Yes.

Q. In the operation of the Indiana Fuel Company, did you have occasion to use black blasting powder? A. Yes, sir.

Q. Do you recall whether the Indiana Fuel Company made any purchase of black blasting powder from a company known as the Buckeye Powder Company, a powder known as Buckeye powder? A. Yes, sir.

Q. To the best of your recollection, when was that purchase made? A. I couldn't say, I don't know when, I don't remember; our books show.

6939

Q. Can you give me your best recollection of that date? A. No, I can't; it was in 1904, though, I think.

Q. Do you recall the circumstances under which this purchase was made? A. Yes, sir.

Q. What were the circumstances? A. It was a complimentary order, an order given to Mr. Waddell through friendship.

Q. Mr. Waddell who is sitting in front of you now? A. Yes, sir.

Q. After you made these purchases of the Buckeye Powder Company, do you recall or not, whether you continued purchasing from that company? A. No, sir, I think that is all the powder we bought.

Q. State any facts which you know which led you not to place any more orders with the Buckeye Powder Company. A. Oh, we had a contract with the Indiana Powder Company, I think.

6941 Q. After the purchase of this complimentary order from the Buckeye Powder Company, did you have any conversations with any of the following persons or representatives with reference to Buckeye powder, or continuing or ceasing to purchase the same from the Buckeye Powder Company? I will state to you the names of the persons: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. Dupont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable or Jonathan A. Haskell? A. I never met any of them, that I know of.

6942 Q. Did you ever meet anyone purporting to be an agent of any of those gentlemen? A. I never met anybody, I guess, only Mr. Spensler; I don't know whether he was an agent for any of those people or not, whether he was an agent for the Powder Company at that time.

Q. After the purchase of the powder of the Buckeye Powder Company did you have any conversation with any officer or agent or representative, with reference to Buckeye powder, with the following corporations: Judson Dynamite and Powder Company, Fairmont Powder Company, Laffin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, which is a Pennsylvania corporation, E. I. du Pont de Nemours and Company, which was a corporation

other than the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company?

Mr. Abbott: That is objected to on the same grounds as before stated.

A. No.

Cross-examination by Mr. Abbott:

6944

Q. How much powder did you use per year, Mr. Shirkie? A. During that time?

Q. During that time, yes. A. About three or four carloads a month, I guess.

Q. That would be about 2500 kegs per month? A. I expect about that.

Q. You are interested, are you not, with the du Pont Powder Company, or some of its associates at the present time? A. No, sir.

Q. You are interested in what is known as the United States Powder Company? A. No, sir.

6945

Q. How long since you have been interested in that company? A. Why, the dates are confusing to me; I don't know just exactly when I did sell my stock, but probably a year ago.

Q. You sold a large interest that you had acquired in the United States Powder Company to the E. I. du Pont de Nemours Powder Company, did you not? A. No, sir.

Q. Did you have any interest in the United States Powder Company prior to 1909? A. I couldn't tell you; I don't know.

Q. To whom did you sell the interest which you had in the United States Powder Company? A. The interest I had in the United States Powder Company was sold to Mr. Olin.

Q. Mr. F. W. Olin? A. I don't know his initials.

Q. Do you remember how much that interest was? A. No, I don't.

Q. Was it about 60%? A. Of the stock of the company?

Q. Yes. A. No, sir, it was only a small amount.

Q. Didn't you collect together a number of shares of stock from other persons and pool them and dispose of them to Mr. Olin? A. Yes, sir.

6947 Q. And what was the total amount of the pool which you collected together? A. I don't know; I can't tell, but it was less than 30% I expect.

Q. Less than 30%? A. Yes, sir.

Q. Are you sure? A. I think so; I am not positive, but I know we didn't have such a great holding in it, as I remember.

Q. Do you know how much stock Mr. Olin owns in the United States Powder Company? A. No, I don't.

Q. What, if you know, is the business of Mr. Olin at the present time? A. I don't get you.

6948 Q. Mr. Olin is President of the Equitable Powder Company, is he not? A. I don't know.

Q. Was he not at the time when you owned your interest? A. I don't know that.

Q. Do you know whether he is President of the Western Powder Manufacturing Company at Evansville, Illinois? A. No, sir.

Q. You stated that you were under contract with the Indiana Powder Company; do you remember when that contract began and when it ended, if it ever has ended? A. No, sir, I couldn't tell you.

Q. Do you remember the terms of the contract? A. No, sir.

Q. Do you remember the price you paid for the powder? A. No, sir.

Q. Do you remember whether there was any re-

bate provided for in the contract? A. No, sir, there was no rebate.

Q. It was a flat rate? A. A flat rate.

Deposition of WILLIAM M. CARTER, a witness produced on behalf of defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

6950

Mr. Carter, where do you live? A. Joliet.

Q. How long have you resided in Joliet? A. Most of the time for the last nine years.

Q. In what business are you engaged? A. The stone business.

Q. With what company were you engaged in business during the years 1904, '05 and '06? A. The Sexton Building Material Company.

Q. Where did that company make its headquarters? A. Chicago.

Q. During the years 1904, '05 and '06, what office, if any, did you hold in that company? A. Superintendent of the quarry and vice-president of the company, the latter part of it.

6951

Q. Where were the quarries of the company? A. At Joliet.

Q. As superintendent, or vice-president of the company, was it your duty to purchase any blasting powder? A. Yes, sir; I bought all of their blasting powder; I bought all of their supplies.

Q. Do you recall or not, whether you purchased during the years 1904, '05 and '06, any powder of the Buckeye Powder Company? A. Yes, we did.

Q. After you purchased powder of the Buckeye Powder Company, did you, prior to the first of

6952

William M. Carter—Direct

January, 1909, purchase powder of any other company? A. Yes, sir.

Q. What company was that? A. The Burton Powder Company.

6953

Q. State what the facts were which caused you to cease purchasing powder of the Buckeye Powder Company, and caused you to purchase powder of the Burton Powder Company? A. We bought powder from the Buckeye Powder Company at a price F. O. B. cars Joliet. We had to add our hauling, and the Burton was F. O. B. our plant, and we saved about a dollar on a load; we thought of the cost, and we didn't have to attend to that delivering.

Q. State, if you know, about how many kegs of powder comprise a load? A. We order, approximately, 25 kegs at a time.

6954

Q. Between the time of your first purchase of Buckeye Powder and on down to January 1st, 1909, did you have any communication or conversation with any agent of the E. I. du Pont de Nemours Powder Company? A. Yes, sir.

Q. State, if you will, who the agent was, if you remember, and also, what was the conversation? A. I don't remember the name of the agent; my recollection is, they had various men that solicited business, but their price was so high I couldn't do anything with them.

Q. State more explicitly— A. It was higher than we were paying at that time.

Q. In any of these conversations that you had with the agents of the E. I. du Pont de Nemours Powder Company, was there anything said by those agents with reference to the Buckeye Powder Company? A. No.

Q. Will you state whether you had any communication or conversation regarding the Buckeye

powder or the Buckeye Powder Company with any one of the following persons, or anyone representing as agent or otherwise, any one of the following persons whose names I will read to you: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond D. Buckner, Frank L. Connable or Jonathan A. Haskell? A. No.

6956

Q. Will you state whether or not, after you purchased powder of the Buckeye Powder Company, you had any conversation or communication with any officer, agent or representative, concerning the Buckeye powder or the Buckeye Powder Company of the following corporations which I will name: The Judson Dynamite and Powder Company, the Fairmont Powder Company, Laffin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, the E. I. du Pont de Nemours Company of Pennsylvania, which is a different corporation from E. I. du Pont Powder Company, and the E. I. du Pont de Nemours and Company, which is likewise a different concern, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company?

6857

(Objection overruled; exception allowed.)

A. No.

Q. Will you state or not, whether you were induced or persuaded by any agent of the persons or corporations that I have named, or by those persons, or by any officer of the corporation, not

6958

William M. Carter—Cross

to purchase powder from the Buckeye Powder Company? A. No.

Cross-examination by Mr. Abbott:

Q. Mr. Carter, were you the sole person in charge of the purchasing department of the Sexton Building Company during the period you have stated?

A. No, I wouldn't say that.

6959

Q. Who was the other person? A. Mr. Jacobs.

Q. What are his initials? A. S. T.

Q. Would you recognize his signature if you saw it? A. I don't know whether I would or not.

Q. I show you a paper writing purporting to be a letter on the letterhead of the Sexton Building Material Company, Chicago, October 27, 1905, signed by Sexton Building Material Company, S. T. Jacobs. State whether or not you recognize the signature? A. Yes, sir, I think that is his signature; it looks very much like it. I haven't seen it for a number of years, but I should say it is.

6960

Said letter is marked "Exhibit P. 27" and read to the jury as follows:

Chicago, Oct. 27th, 1905.

991

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

We have tried the powder you sent us and find it very good indeed. Our Superintendent says all the sizes you sent are good; so please send to us 25 Kegs of Powder to Joliet which would make about 6 kegs of each of your four sizes.

Please send this as promptly as possible and oblige,

Yours truly,

Sexton Building Material Co.

S. T. Jacobs.

A. If I may be allowed to say something, I would say I was not at the quarry, and I very frequently called on Mr. Jacobs and told him to order a certain number of kegs.

Q. He was under your direction? A. No, but I called up and told him what I wanted.

6962

Q. What was his position in the company? A. I think he was Treasurer.

Q. The letter that has been introduced in evidence, "Exhibit P. 27," to the best of your knowledge and belief, was sent out in the regular course of business? A. I presume so, yes.

Q. Now, you stated that some agent of the E. I. du Pont de Nemours Powder Company called upon you, but you didn't remember the name of the agent? A. No; I remember the name of one agent for the du Pont Powder Company.

6963

Q. I am asking you now about the agent who called upon you? A. No; the only name I remember is the man who has been calling upon me for the last year and a half.

Q. Has that agent called upon you within the last few days? A. No; I think the last time I saw him was about a month ago.

Q. What was his name? A. I think Connolly.

Q. Was his name Donnelly? A. I think it was; he was a red-headed Irishman.

Q. What business did he see you about? A. To make a contract this coming year.

(Mr. Donnelly appears in the room.)

6970

Patrick F. Murphy—Direct

Q. Is that incorporated? A. Yes, sir.

Q. What office do you hold? A. President.

Q. How long have you been President of the Capital Coal Company? A. About twelve years.

Q. You became President, then, in the year 1901? A. Somewhere around there, yes.

Q. Prior to your becoming President did you have any connection with the company? A. I have been connected with that company for thirty-two years.

6971 Q. What have you been doing for that time? A. A driver, trapper, miner, and superintendent, and President, and Secretary and Treasurer. I went all the way up.

Q. Then you have had practical experience as a miner? A. I am a practical miner, yes, sir.

Q. Where are mines of the Capital Coal Company located? A. There were two, we only have one now. It's on Monroe and Nineteenth st., City of Springfield.

6972 Q. In the mining operations of the Capital Coal Company will you state whether or not you used black blasting powder? A. Yes we used black blasting powder, single C—

Q. Between the years 1903 and 1909 did you use black blasting powder in your mining operations? A. Yes, sir.

Q. Between those years who made the purchases of black blasting powder for your company? A. I did.

Q. Do you recall, or not, whether, between the years 1903 and 1909, you bought any powder known as Buckeye powder of the Buckeye Powder Company? A. Yes, sir, the years of 1905 or 6—

Q. In the years 1905 or 1906, will you state from whom you purchased that powder and the circumstances of its purchase? A. I bought it from a young man by the name of Stickel and he had a

letter of introduction from Mr. Giblan. He was one of our Board of Directors and a friend of his family.

Q. How much of the Buckeye powder did you purchase? A. Fifty kegs, as I recall it.

Q. Fifty kegs? A. Fifty.

Q. Will you state whether or not the fifty kegs, or any portion thereof, was used in the mine of the Capital Coal Company? A. As I remember it, we used some of that powder. We gave it to the miners and told them to try it out, as it was much cheaper than the powder we were buying.

6974

Q. Will you state, Mr. Murphy, whether or not, to your knowledge, it was tried out in the mines? A. Yes, sir, it was.

Q. Did you ever have occasion to see the results of the use of the powder in your mines? A. No, sir; only just from those men that we gave the powder to.

Q. Did you make an examination in the mine yourself?

Q. Did you, with your own eyes, see the results of the use of this powder? A. No, sir.

6975

Q. State whether or not you continue the purchase of Buckeye powder. A. No, sir, we discontinued the use of it.

Q. Give the reasons for discontinuing the use of Buckeye powder. A. It was used at Flat Creek. The miners were given the powder to try out, and they said at Flat Creek that it wouldn't shoot the coal.

Q. Will you state, Mr. Murphy, whether you knew the miners personally to whom this Buckeye powder was given for trial. A. Did I know them personally?

Q. Did you know the standing of the men as miners, whether it was good or bad, to whom the pow-

6976

Patrick F. Murphy—Direct

der was given. A. They were good, practical miners.

Q. Will you state whether or not you endeavored to use the Buckeye Powder in the mines of the Capital Coal Company in any other way than in kegs of the Buckeye Powder Company? A. Yes, we did.

Q. State what you did. A. I took the powder from the Buckeye kegs and put it into the du Pont kegs, and the same men refused to use it.

6977

Q. Will you state whether or not you returned any of the powder that you purchased of the Buckeye Powder Company, to the Buckeye Powder Company. A. Yes, we returned them thirty-nine kegs out of fifty.

Q. State your reasons for returning them. A. I opened the kegs and the powder wasn't a C powder. There were three grades of powder in one keg, C, F, and some FF.

6978

Q. After you purchased the Buckeye Powder, Mr. Murphy, did you have any communication or conversation with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir. They knew nothing about it.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is Plaintiff, and the E. I. du Pont de Nemours Powder Company and others are defendants, the others being the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Powder Company, the name of the Capital Coal Company has been given as one of their customers, which the defendants or their agents or representatives induced to abandon the purchase of Buckeye powder. Will you state whether or not any of the defendants, their

Patrick F. Murphy—Cross
George W. Solomon—Direct

6979

agents or representatives, induced the Capital Coal Company to abandon the purchase of Buckeye powder? (Objection overuled, exception allowed). A. No, sir.

Cross-examination by Mr. Abbott:

Q. Do you know all the agents and representatives of the defendants in this case? A. I know them all in this district.

6980

Q. In this district? A. Yes.

Q. What were the names of their agents during the years 1903 to 1909? A. Mrs. E. Rice, we bought of her; we bought powder of her.

Q. Is she the only agent? A. She is the only one.

Q. And she is the only person you had in mind when you answered the last question propounded by counsel? A. Yes, she was the agent for this district.

6981

Deposition of GEORGE W. SOLOMON, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Solomon, where do you live? A. At Springfield, Illinois.

Q. How long have you lived here? A. All my life.

Q. Thirty years or so? A. Thirty-three years.

Q. In what business are you engaged? A. Coal mining.

Q. How long have you been engaged in the coal mining business? A. For the last nine years.

6982

George W. Solomon—Direct

Q. You have been coal mining for nine years?

A. Yes, sir.

Q. Are you connected with any company? A. Yes, sir.

Q. What company? A. I am connected with the Black Diamond Coal Company.

Q. Is it an incorporated company or a partnership? A. An incorporated company.

Q. Do you hold any office in that company? A. Yes.

6983

Q. What office? A. President.

Q. How long have you been President? A. Nine years.

Q. Since you have been connected with it? A. For nine years.

Q. Do you recall the year that the company commenced business? A. Yes.

Q. Just tell us. A. It was in 1904.

Q. Where are the mines of the Black Diamond Coal Company located? A. At Auburn, Illinois.

Q. How far is that from Springfield? A. About 20 miles.

6984

Q. Will you state whether or not, between the years 1904 and 1909, you used black blasting powder in your mining operations? A. Yes, sir, we did.

Q. Who made the purchases of supplies and black blasting powder? A. I did.

Q. For your company? A. Yes.

Q. Do you recall or not, whether you purchased any powder known as Buckeye powder, from the Buckeye Powder Company? A. Yes, sir.

Q. About when was that purchase or purchases made, to the best of your recollection? A. In the summer of 1905.

Q. Do you recall the amount of the purchase of black blasting powder that you made of the Buckeye Powder Company? A. Two or three carloads.

Q. Are you a practical miner? A. Yes, sir.

Q. Have you used black blasting powder personally in mining operations? A. Yes.

Q. Did you have any control of the management of the mining operations of the Black Diamond Coal Company in 1905? A. Yes, sir.

Q. After you purchased the two or three carloads of black blasting powder of the Buckeye Powder Company, will you state whether or not that powder was used in your mine? A. Whether it was used?

6986

Q. In the mines of the Black Diamond Coal Company? A. Yes, sir, it was used.

Q. Was all of that powder used? A. Some of it was returned on account of not being the right grade.

Q. After this powder was used in your mines, will you state or not, what was done with the powder, so far as the miners were concerned? A. The miners refused to use it.

By Mr. Abbott:

6987

Q. Do you know that of your own knowledge? A. Yes.

Q. You personally saw them endeavor to use it, and then refuse to do so? A. The Miners' Committee waited on me personally, and told me they wouldn't use it any more.

Q. Did you, after this committee had called upon you, make any examination of the powder yourself, personally? A. I required them to bring some of the powder to me.

Q. And in what form was it brought to you? A. It was brought to me in kegs.

Q. Will you state whether or not, at the time the powder was brought to you, these kegs had been opened or not? A. Some of them had been opened.

6988

George W. Solomon—Direct

Q. All of them? A. I don't remember positively.

Q. Did you make an examination of the powder?

A. Yes.

Q. State what was the result of that examination? A. It didn't seem to be of uniform grade to me; it didn't seem to be the same size as it generally is in black blasting powder.

6989

Q. Are you familiar with the grades of black blasting powder used in mining operations? A. I am familiar with the two grades we use down there, the "C" and double "C."

Q. Will you state what you saw with reference to the grade or grades of Buckeye powder that was submitted to you? A. It seemed to me that the two grades were mixed, the "C" and double "C"; there were small grains and large grains all together.

Q. State whether or not you saw any difference in the size of the grain with your own eyes. A. Yes; there was a difference.

6990

Q. Will you state whether or not, after you examined this powder, whether you purchased for the company any more of the Buckeye powder? A. No, sir, we didn't.

Q. You didn't purchase any more? A. No.

Q. After you purchased Buckeye powder, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, with reference to Buckeye powder? A. No, sir.

(Objection overruled and exception allowed.)

Cross-examination by Mr. Abbott:

Q. Referring to the last question propounded to you by counsel for the defendants, do you claim to know all of the persons who may be agents or representatives of the E. I. du Pont de Nemours Powder Company, and the other companies which he named to you? A. I don't know them all.

Q. Did you know them? A. No, I didn't know them all; I don't think I know them all.

Q. You spoke about the Miners' Committee calling upon you in regard to Buckeye powder; what powder were you using at that time, what other powder? A. Buckeye.

6992

Q. What other powder? A. Not any.

Q. What powder had you been using before that? A. We purchased powder from the Explosive Supply Company.

Q. What was the name of it? A. Du Pont.

Q. How do you know the members of the Mine Committee were not agents of the du Pont Powder Company? A. I don't know whether they were or not; I know they were working for us, that's all.

6993

Q. You say you are 34 years old? A. Thirty-three.

Q. Have you been living at Springfield or Auburn all your life? A. I have been living at Springfield all my life; I go back and forth.

Q. Who were the officers of the Black Diamond Coal Company during the years 1903 to 1909, besides yourself? A. It was organized in 1904.

Q. Then, from 1904 down to 1909, besides yourself, who were the officers? A. Four brothers.

Q. Four brothers? A. Three other brothers.

Q. State the various positions they hold in your company. A. Edward is Secretary.

Q. Not now—what was he? A. They hold the same positions now.

Q. Go ahead? A. And Henry is Treasurer, and Robert C. Solomon, Jr., is Vice-President.

Q. Those are the offices they held then? A. Yes.

Q. Those brothers are still living, are they? A. Yes, sir.

Q. And still officers of your company? A. Yes.

Q. And they live in Springfield, do they? A. One of them lives at Auburn.

Q. Are they older or younger than you? A. One is older and two younger than I.

6995

Q. Wasn't your father engaged with you in the business at the time you began? A. No, sir.

Q. He was not? A. No, sir, he never was engaged with us.

Q. You stated a while ago, that you made a purchase of Buckeye powder in the summer of 1905? A. Yes.

Q. Can you be a little more definite about that and state the month? A. Well, it was—it was before July, I think.

6996

Q. Before July? A. Yes; because in July, August and September we had a strike, I know, and we didn't buy any powder then to amount to anything; if we bought anything, we bought it after we started up.

Q. You still wish it understood that you bought that powder in the summer of 1905? A. In the spring or summer of 1905, the early part of 1905.

Q. I will ask you if you have any data, any papers or letters or documents to which you can refer, on that subject, to refresh your memory? A. My ledger.

Q. Have you recently refreshed your memory on the subject? A. Yes, sir.

Q. When? A. A couple of months ago, I should think.

Q. Have you any papers now in your possession relating to the matter? A. No, sir.

Q. None at all? A. No.

Q. No bills or letters? A. No.

Q. At whose request did you refresh your recollection? A. Mr. Larimore.

Q. Who does he represent? A. He was the agent of the du Pont Powder Company.

Q. Where? A. Springfield is where he resides; I guess he is agent here.

Q. Who were the members of the Miners' Committee who called upon you and informed you that they would not use any more Buckeye powder? A. I couldn't give their names; it was so long ago; the Mine Committees has changed so often, that I did not keep any record of it.

6998

Q. Is a record of such matters kept, anywhere, to your knowledge? A. No, sir.

Q. You stated you didn't think this powder was the right grade; how did you arrive at that determination? A. By having so many sizes of powder in the grain.

Q. Are you familiar with the different kinds of black blasting powder? A. I could tell single "C" from double "C."

6999

Q. What has been your experience with reference to any particular grade of black blasting powder; is it uniform or not uniform? A. It's generally uniform.

Q. Did that rule obtain during the years 1904 to 1909, as it does now? A. I don't know whether I paid any particular attention——

Q. Isn't it a fact, that from 1904 to 1911, there was no regular grading of black blasting powder in the State of Illinois, but that it has since been made necessary by law? A. No, sir.

Q. Don't you know that a recent Legislature has made it necessary to conform to certain sizes absolutely under certain names as to grade of black blasting powder? A. No, sir.

7000

George W. Solomon—Cross

Q. Don't you know, that during the years 1904 to 1909, there was no established grade of powder among the powder companies? A. I know there was an established grade of powder, and that we bought it.

Q. There was an established grading of powder? A. Yes.

Q. But, was it always the same, even from the same brand of powder? A. Yes, sir, I could always open a keg of powder and tell.

7001

Q. As a matter of fact, were you not under contract with the du Pont Powder Company? A. No, sir.

Q. Have you ever been under contract with them? A. Yes, lately.

Q. How long since? A. I think it's since 1907 or 1908, I am just guessing at that; but it's about that time.

Q. Do you remember what the terms of that contract that you made with the du Pont Powder Company were? A. I don't remember positively, no, sir.

7002

Q. Do you remember what price you had to pay for the powder which you bought at that time?

Q. Do you recall as to that? A. Yes.

Q. Will you state what it is? A. 95 cents.

Q. How long did it continue to be 95 cents? A. I think for about two years.

Q. How much black blasting powder did you consume in your mining operations during the years 1907 and 1908? A. I couldn't tell, offhand.

Q. Can you give an estimate of the number of kegs of powder you consumed during those years? A. I don't think I could get anywheres near the truth, because I don't remember anywheres near how much we used. We were using some part of the time machines, and shooting off the solid some part of the time.

Q. Do you remember how much you used during the years 1904, '05 and '06, per year? A. No, sir.

Q. You don't know? A. No.

Q. You don't recall anything about how much you used at all at that time? A. No, sir.

Q. Do you know how many distinct sizes of a single grade of powder there are? A. No; all I know is the general, size of "C" and double "C."

Q. When you say the "general size," are there other grades? A. They won't all be exactly the same size.

7004

Q. Don't you know, as a matter of fact, that there was nearly 100 sizes of "C" powder? A. I don't know.

Q. And of "CC"? A. That I don't know; all I know is, I can take the two kegs, "C" and double "C," and I can tell them apart very easily.

Deposition of JOHN B. FALCETTI, a witness produced on behalf of the defendants, being duly sworn, read as follows:

7005

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. At Verdon.

Q. The State of Illinois? A. Yes sir.

Q. How far is that from Springfield? A. Twenty-two miles.

Q. What line of railroad is that on? A. On the Alton and the C. Z. & Q.

Q. Are you connected with that company? A. What company?

Q. Are you connected with any company? A. With the Royal Colliery Company.

Q. What position do you hold with that company? A. I am superintendent.

7006

John B. Falcetti—Direct

Q. Between the years 1903 and 1909 were you connected with that company? A. Yes.

Q. In what capacity? A. Superintendent.

Q. In what business is that company engaged?
A. Coal mining.

Q. Where are the mines located? A. About a mile and a half south and west of Verdon.

Q. On the line of what railroad? A. The same.

Q. It is of the line of those railroads? A. Yes, sir.

7007

Q. Did you say both? A. Both.

Q. In the mining operations did you use black blasting powder between the years 1903 and 1909?
A. Yes, sir.

Q. How many purchases of black blasting powder for the Royal Colliery Company did you make—or, who made the purchases of black blasting powder for the Royal Colliery Company between 1903 and 1909? A. I did myself.

7008

Q. Of what company or companies did you purchase powder prior to September, 1907? A. Why, we opened up the mine in 1903 and I shoved around a little and bought powder, but I don't know what different kinds I bought for a while, and we were demonstrating or trying to demonstrate the respective powders which might be suitable for our mines and we finally settled on the Alton powder.

Q. Do you know what company makes that powder? A. The Equitable, I think.

Q. Did anything occur, to your knowledge, in the year 1907, impossible to get Equitable powder? A. In 1907?

Q. Yes. A. I don't remember the year, but there was an explosion at the Equitable factory, I think that's 1907, I am pretty well sure it was 1907.

Q. You think it was in that year? A. I am perfectly well satisfied it was.

Q. What effect did that explosion have, if any, with respect to the supplying of your company with powder? A. It simply put them out of the business and we couldn't get any powder from them and they told me to go on the market and buy powder and they would stand by me on the price

Q. After that explosion will you state whether or not you purchased any powder known as Buckeye powder? A. Yes, sir.

Q. Of whom did you purchase that powder? A. Of Mr. Waddell there.

7010

Q. Do you know what office he held in the Buckeye Powder Company? A. He was President, I think.

Q. Now, do you recall about amount of powder purchased of the Buckeye Powder Company? A. Well, I bought two or three lots, I am not sure, I bought the first lot of a hundred and fifty kegs and tried out and it proved all right, and I am under the impression that we bought two carloads afterward.

Q. Will you state whether or not you continued to be a purchaser of Buckeye powder? A. No, only just that instance, I think.

7011

Q. Why did you cease to purchase powder of the Buckeye Powder Company? A. Why, the Alton mill come into operation and we bought powder from them.

Q. And then you went back as soon as the mill was in operation and purchased powder of the Equitable Powder Company? A. Yes.

Q. Is that what you mean? A. Yes.

Cross-examination by Mr. Abbott:

Q. Mr. Falcetti, you were superintendent of this company? A. Yes, sir.

7012

John B. Falcetti—Cross

A. D. V. Wentz of Philadelphia.

Q. Do you refer the question of the purchase of powder to Mr. Wentz sometimes? A. Well, we have last year or this year, but prior to that I bought all the powder we used.

Q. Were you under contract for the purchase of black blasting powder before the year 1903 or 1904?

A. In 1903 we just began to look around, but we were under contract ever since the first time.

7013

Q. You mean from when you first went under contract you remained so? A. Yes, sir.

Q. Who were you under contract with at that time? A. Well, with the Alton people until a year ago about this time.

Q. The Alton people? A. Yes, sir.

Q. Always with the Alton people? A. Yes.

Q. You mean the Equitable Powder Company? A. Yes, sir.

Q. How many kegs of powder did you consume in your mining operations during the years 1903 to 1909? A. After we got developed we used about two thousand kegs a month.

7014

Q. A month? A. From 1,800 to 2,000 kegs a month.

Q. Twenty-four thousand kegs a year, do you mean? A. Well, the mine don't work steady, and we get nineteen tons to a keg, and we produce about twenty-four hundred tons.

(Mr. Abbott makes the witness his own witness.)

Direct examination by Mr. Abbott:

Q. Mr. Falcetti, do you recall how long you used Buckeye powder in your mines? A. I don't know how fast it was used. We used the first one hundred and fifty kegs, and I think two carloads after-

wards, and we used it, of course, as fast as they burned it.

Q. A carload is how many kegs? A. Eight hundred.

Q. Did you, yourself, know about the use of the Buckeye Powder at that time in your mines? A. Yes.

Q. Did you see the results of that powder? A. Yes, sir.

Q. Did you talk with the men concerning the powder? A. Yes, sir.

7016

Q. What did you find was the result of the powder so far as its quality is concerned?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial, the issue in this case not being a case of the merits or demerits of the Buckeye powder.

Mr. Abbott: If you will stipulate that I will not ask another question.

Mr. Katzenbach: I will say that that is my understanding of the law.

7017

A. The Buckeye powder was all right. It done the work.

Q. Was it as satisfactory as any powder? A. It was satisfactory.

Q. And as satisfactory as any powder, was it? A. Yes, sir.

Deposition of ISAAC N. BIGGS, a witness produced on behalf of the defendant, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Biggs, where do you live? A. I live in Telula, Illinois.

7018

Isaac N. Biggs—Direct

Q. How far is that from Springfield? A. Well, I don't know. Some of them call it twenty-two miles and some twenty-two and a half, and twenty-five. It's hard to get at it.

Q. What business are you engaged in? A. I am operating a wagon shaft, a gin shaft.

Q. Mining coal? A. Yes.

7019

Q. How long have you been engaged in that business? A. Well, I sunk the shaft about six years ago and sold it out and bought it back and sold it again and fell heir to it the next time, and I ran it for three years, to the 14th of February this time.

Q. Did you use black blasting powder in your mine? A. Yes, sir.

Q. Do you recall whether or not you purchased any black blasting powder of the Buckeye Powder Company, known as Buckeye Powder? A. Yes, sir.

Q. How many purchases did you make? A. Just one.

7020

Q. When was that? A. Well, I don't know just what year it was, but it has been about five years ago this spring.

Q. About five years ago? A. Yes.

Q. How many kegs did you purchase at that time? A. Fifty.

Q. Whom had you been buying powder off before? A. Of Mrs. Rice, all the time.

Q. Du Pont Powder? A. Yes, sir.

Q. What price did you pay for that? A. \$1.25.

Q. What price did you pay for Buckeye powder? A. \$1.15.

Q. State whether or not the fifty kegs of Buckeye powder was used by you? A. Well, just the fifty is all. We didn't get any more.

Q. You did use that? A. Yes.

Isaac N. Biggs—Cross
Edward G. Edwards—Direct

7021

Q. Why didn't you purchase any more of the Buckeye powder? A. Well, they shipped it to us sight draft on the bank, the same as C. O. D., and we had to pay for it before we could get the powder, so it made us sore, and we decided that we wouldn't buy any more of it.

Q. From whom, then, did you purchase? A. We come back to Mrs. Rice again.

Q. What price did you pay her afterwards? A. I don't remember, I think it was \$1.25.

7022

Q. After you purchased this Buckeye powder did any agent of the Du Pont Powder Company ever communicate with you in any way with reference to this Buckeye powder? A. No, sir.

Cross-examination by Mr. Abbott:

Q. When you went back to buying powder of Mrs. Rice she didn't make a sight draft on you? A. No, sir, never thought of anything of the kind.

Q. She gave you credit which you wanted? A. Well, I ordered it over the telephone, and she sent the bill and I paid it.

7023

Deposition of EDWARD G. EDWARDS, a witness produced in behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Edwards, where do you live? A. At the present time?

Q. Yes. A. 115 North Borland Avenue.

Q. City of Peoria? A. Yes, sir.

Q. Between the years 1903 and 1909, were you

7024

Edward G. Edwards—Direct

engaged in the mining of coal? A. 1903, yes, sir.

Q. Are you still engaged in that business? A. No, sir.

Q. When did you cease to be an operator? A. Well, I couldn't tell you now when I did quit.

Q. About how many years ago, to the best of your recollection? A. Well, around about five years, I think; to be as near as—I wouldn't say that was correct, but I think so.

7025

Q. Where were your mines located? A. Our mines were located in Rosefield Township; I couldn't give you the section.

Q. About how far from Peoria? A. I should judge about 13 miles.

Q. Under what name did you do business? A. The Edwards Mining Company.

Q. That wasn't an incorporated company? A. Yes.

Q. It was? A. Yes.

Q. What office did you hold? A. Treasurer and Manager.

7026

Q. Between the years 1903 and 1908, did you use black blasting powder? A. Yes, sir.

Q. Who made the purchases of black blasting powder? A. I did.

Q. Between those years, what black blasting powder did you use in your mines? A. We used du Pont, Hazard, Buckeye, and I believe we had a batch of American; wasn't there an American powder? I think we had a batch of that. I think we got it through Mr. Barnewolt.

Q. Why did you use so many kinds of powder in your mines? A. Well, I always figured around to get the best prices on the powder that I could.

Q. State whether or not you permitted your miners to use any kind of powder that they desired. A. Well, we tried to. Whatever kind of

powder we had on hand, we generally tried to get them to use that powder; of course, rather than have any trouble, we would get them other powder. There always seemed to be some of them kicking around, and we generally tried to get them to use whatever we had on hand, because when we bought a batch of powder, we wasn't forehanded enough to carry 400 kegs of powder, which you had to buy in good quantities to get the price low.

Q. State whether or not, up to the time you went out of business, you continued to purchase Buckeye powder? A. I believe we had Buckeye powder when I quit; I think that's the last powder we used.

7028

Q. After you purchased Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to using Buckeye powder? A. Well, no more than with Mr. Moffatt; that was the only one, I guess.

Q. What conversation did you have with him? A. Well, now, I couldn't state the conversation, but he wanted to know why we didn't give him an order for powder; he would see me all right, or something around about that strain.

7029

Q. Who was Mr. Moffatt acting for, if you know? A. Dooley Brothers, I think.

Q. And where are Dooley Brothers engaged in business? A. On Adams Street.

Q. In the City of Peoria? A. In the City of Peoria.

Q. As a result of this conversation with Mr. Moffatt, did you give any order to him? A. I gave them some orders, but I couldn't say to what extent they were.

Mr. Abbott: No questions.

7030

Edward G. Edwards—Direct

(Counsel for the plaintiff makes the witness his own witness.)

Direct examination by Mr. Abbott:

Q. Mr. Edwards, you stated on your examination a moment ago, that you continued to purchase Buckeye powder until you went out of business?
A. Yes, sir.

7031

Q. I would like to ask you to state what the results were which you obtained from the Buckeye powder as compared with the other kinds of powder which you used?

By Mr. Katzenbach:

Q. Did you ever use Buckeye powder yourself in the mines? A. No, sir, I never worked in the mines; I was weighing the coal and out on top.

7032

Q. Did you ever make any inquiry or keep any data with reference to the results obtained from the use of the various powders which you had in your mine? A. This much: Mr. Waddell's mill was situated right down below us there, where we could get powder in ten keg lots any way we wanted; we could call up on the telephone, and if we found that we had to have powder, we could call up down there, and they would send us up anywhere from ten to twenty kegs; of course, when we were nearly out we could get that order up, and he would send us any number of kegs we wanted; that was the reason I preferred to use Buckeye powder.

Q. Did you keep track of the results you obtained from Buckeye powder, so far as the tonnage was concerned? A. Yes; our men made a kick against this powder, and we couldn't get the results, as we could the other powder, and I took their bulletin, and I said, "Your bulletins show that you did fully as well, if not better."

By Mr. Katzenbach:

Q. That is what the men told you? A. They said they didn't want to burn it any more.

Q. These bulletins you refer to, what were they?

A. Well, that was the weight of their buggies of coal that come out.

Q. You examined those bulletins from time to time? A. Yes, several times, when the controversy come up.

Q. State what were the results which you discovered were obtained by the use of Buckeye powder, as shown by those bulletins? A. The results were really better than obtained from the other powder; that's what I showed the miners.

Q. What did the miners say to you, if anything, after you showed them the results were better? A. They had nothing to say; it kind of stumped them.

A. That was the reason in using the Buckeye powder it was a great deal more convenient to us, and we could get it in small lots, without a contract for a great many kegs.

Q. You wanted to use Buckeye powder, but some of the miners objected? A. Yes, sir.

Cross-examination by Mr. Katzenbach:

Q. Then, the reason you preferred to use Buckeye powder was, because you could get it in smaller lots? A. And it was handier.

Q. Yes, and also because it was cheaper? A. It ran just about the same price.

Q. Then, the controlling motive was, because you could get it in smaller lots? A. Yes, and get it—

Q. Just when you wanted it? A. Yes, sir.

Q. And you continued to keep it on hand up until you went out of business? A. We generally tried

7036

William E. Foley—Direct

to run off whatever we had on hand, because the men sometimes positively refused to use Buckeye powder. I bought of them, but the committee would object to it, so that they had to get some other powder, and that the agreement said for them to get whatever powder the men wanted.

Q. The agreement is the state agreement, or the agreement between the operators and the mine workers? A. I think it was in the agreement; I wouldn't say sure; but they claim the right, anyhow, to get the powder the miners wanted.

7037

WILLIAM E. FOLEY, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Abbott:

Q. Mr. Foley, where do you live? A. 801 North Monroe, Peoria.

7038

Q. Between the years 1903 and 1908 were you engaged in any business? A. Yes, sir.

Q. What business were you engaged in? A. The coal business, operating mines.

Q. State what mines between those years you operated. A. Two, the Mapletown and the Canton shaft. It was known then at that time as the Foley Coal Company. I sold it to H. W. Lynch.

Q. When did you cease to own the Canton mine? A. The fifteenth day of December, 1905.

Q. Did you subsequently dispose of the other two mines you mined? A. Yes.

Q. When was that? A. About 1907 or 8, possibly.

Q. You operated these mines under your own

name? A. The Canton mine I incorporated it under the Foley Coal Company, and the Mapleton mines under the name of W. E. Foley.

Q. Did you use any black blasting powder in your mining operations? A. Yes.

Q. Who made the purchases of black blasting powder? A. I think I did.

Q. Did you purchase any black blasting powder between the years 1903 and 1909? Or, I should say, December 15th, 1905, for the Canton mine? A. Yes, several carloads.

7040

Q. Did you purchase, during that time, any black blasting powder known as Buckeye powder? A. I don't think we did at Canton.

Q. Did you use any black blasting powder known as Buckeye powder at Canton? A. Yes.

Q. Under what circumstances did you use it? A. I think there was a gentleman by the name of Reynolds, I am not certain, but I think it was Reynolds that came there and got us to handle some of their powder.

Q. After his visit was there any Buckeye powder used in the Canton mine? A. I think there was only ten kegs. That's my best recollection.

7041

Q. After the ten kegs were used did you make any purchase of Buckeye powder for your Canton mine? A. I think not.

Q. You did not? A. No, I think not.

Q. Did you purchase any Buckeye powder for your other mines? A. Yes. I expect probably eight or ten at different times.

Q. In what lots? A. I think in ten-keg lots.

Q. During the period that I have named did you use any other powder in your mines? A. Yes.

Q. What kind of powder did you use? A. The du Pont, the Mooar mills.

Q. State the purpose of the purchase of Buckeye

7042

William E. Foley—Direct

powder for your Mapleton mines; that is, why you purchased it. A. Well, I was induced to handle it by the men. What I mean is, some of them claimed they wanted it and I got it to suit them.

Q. Then you purchased the Buckeye powder and gave out to your men as they wanted it? A. Yes.

Q. And during that time was other powder used in your mines? A. Yes, sir.

Q. Other powder was used? A. Yes.

7043

Q. What powder? A. Du Pont.

Q. Was it possible at your mines for a miner to get Buckeye powder, or du Pont, as he preferred? A. Yes.

Q. He could get which he preferred? A. Yes, but if he didn't order Buckeye I sent him du Pont, because I always had most of that on hand.

Q. Was there any other reason? A. No, I can't say there was.

7044

Q. After you began the purchase of Buckeye powder for your mines, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. I can't recall that. I might be talking to an agent and not know him.

Q. Do you recall any conversation about Buckeye powder with anyone who claimed to be an agent of the du Pont Powder Company? A. Relative to what.

Q. I will ask the witness whether he can recall any conversation with reference to Buckeye powder had with anyone known to him to be an agent of the du Pont Powder Company? A. Well, now, I talked to Mr. Dooley and I have talked to others, and I talked with the agent of the du Pont, and others we did business with.

Q. I mean on the subject of Buckeye powder. A. I don't think I have. That is, running it down, that we shouldn't use it. I don't think I ever did.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, the Buckeye Powder Company has given your name, W. E. Foley, as a customer of the Buckeye Powder Company which was induced by the defendants in that case; namely, the du Pont Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, to abandon the purchase of Buckeye powder from the Buckeye Powder Company. Will you state whether or not these defendants that I have named, the three companies, or any agent or representative of them or any other person or corporation, to your knowledge ever induced you to cease or stop the purchase of Buckeye powder? (Objection overruled; exception allowed.) A. Well, sir, I will tell you. Your agent in Chicago used me a dirty trick, and I want you to understand that it was because of it——

7046

Q. What agent was that? A. The gentleman that died the last two or three years, Grover I think it is.

7047

Q. Grover? A. I don't know whether that's his name, but he died in the last two or three years.

Q. Aren't you mistaken about that? A. I am not mistaken about the circumstance. I might be mistaken about the name. I found out then there was something wrong, but just what it was I didn't hardly know.

Q. Did you ever stop the purchase of Buckeye powder? A. I quit the business and stopped all powder.

Cross-examination by Mr. Abbott:

Q. Mr. Foley, you were under contract with the

7048

William E. Foley—Cross

du Pont Powder Company, were you not, during 1903 to 1909? A. I expect I was.

Q. Practically all the time? A. Yes.

Q. Do you know Mr. Waddell? A. Yes, sir.

Q. How long have you known him? A. Probably since 1903.

Q. Do you know Mr. Donnelly? A. Yes, sir.

Q. Do you know Dooley Brothers? A. Yes, sir.

Q. Do you know Mr. Moffatt? A. Yes.

7049

Q. Do you know what relation Mr. Donnelly and Mr. Moffatt and Dooley Brothers sustained to the du Pont Powder Company during 1903 to 1909? A. I took them as representing the du Pont people.

Q. I will ask you whether or not you had a conversation with Mr. Waddell just before he started his plant in 1903, in which you related to him a conversation you had with Mr. Donnelly? A. No, I couldn't. If I could I would.

7050

Q. I will ask you whether, so as to refresh your memory, whether you didn't tell Mr. Waddell at that time that Mr. Donnelly, in a conversation with you, had told you that Mr. Waddell could never succeed with his plant, because the du Pont Powder Company had secured contracts, or had everybody in the State of Illinois tied with contracts, and that there was no one left for him to do business with? A. I can't say who it is, but the conversation is fresh to my memory. I can't say who it was. I may have made that remark myself, but I can't say Mr. Donnelly said it, nor Mr. Dooley, or anybody else.

Q. You remember such a conversation with Mr. Waddell? A. I can't remember the conversation.

Q. How many kegs of powder did you consume in your mines at Mapleton, Illinois, during the year 1903 to 1909? A. In all the mines?

Q. Yes, in your mines at Maplewood or your mines anywhere else. A. In all the mines.

Q. Yes, in the mines at Maplewood or any others in which you were under contract with the du Pont Powder Company to supply you with powder? A. I should judge about thirty kegs a day, speaking off-hand.

Q. How many would you estimate that to be per year? A. I am giving you the busy season's figures upon that, and, of course, in the summer time of course it was very small.

Q. I would like to get your best judgment, Mr. Foley. I don't ask you for particulars in that subject, but just approximately the number of kegs you used per year, on a yearly basis. A. From August until April I think we would run eight hundred kegs a month.

7052

Q. And from April to—— A. Then probably we usually would not average a hundred from that until the first of August again, maybe two hundred, I couldn't say. I have got no records of it.

Q. You speak about a Mr. Grove, did you say? Do you remember his name? A. No, I can't remember his name but I know I went there to Chicago and talked to him in his office, probably Mr. Donnelly would know his name. He died in the last two or three years.

7053

Q. As a result of that conversation did you keep buying du Pont powder? A. No, sir.

Re-cross examination by Mr. Abbott:

Q. Your answer to this question is not intended to controvert what you said on your direct examination about that matter. A. What's that?

Q. I say it isn't intended to controvert what you said on your direct examination about this man and his conduct toward you. A. No, I just spoke of it as an incident in the powder business.

7054

Edmund C. Donk—Direct

Deposition of EDMUND C. DONK, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Donk, are you an officer of the Donk Brothers Coal and Coke Company? A. I have been President of it ever since its formation.

7055

Q. When was it formed, approximately? A. 1893 or 1894, or thereabouts.

Q. Is your company engaged in the mining of coal? A. It is.

Q. In your mining operations, do you have occasion to use black blasting powder? A. We do.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for your company? A. No one made the purchases unless it was ordered by myself, or made direct by myself.

7056

Q. Do you recall or not, whether between the years 1903 and 1909, your company, through you, purchased any black blasting powder of the Buckeye Powder Company? A. Yes.

Q. Do you recall what years those purchases were made? A. No, I couldn't give you the exact year.

Q. Well, approximately? A. If my recollection is correct, in the neighborhood of 1904 or '05, or something like that; I haven't charged my mind with it.

Q. After you purchased the powder of the Buckeye Powder Company, do you know or not whether it was used in the mining operations of your company? A. Yes.

Q. Was it? A. It was.

Q. Did you continue to purchase powder of the Buckeye Powder Company, or did you make any change? A. I got it from a number of people since dealing with them.

Q. Can you state about how long you purchased powder of the Buckeye Powder Company? A. No, not exactly; I suppose, probably five or six months. It probably extended over a longer period.

Q. After you ceased the purchasing of Buckeye powder, of what company did you purchase powder for your mine? A. If my recollection serves me right, we had trouble with the Buckeye—what they call Egyptian.

Q. Will you state why you ceased the purchase of Buckeye powder and purchased powder of the Egyptian Powder Company? A. My recollection of the cause of the change was, in the first place, that the Buckeye Powder people hadn't been serving us with as much satisfaction as previously, and the Egyptian Powder Company being formed, and there were three or four stockholders personal friends of mine, and I turned the business over to them.

7058

Q. After you began the purchase of powder of the Buckeye Powder Company, Mr. Donk, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder at all? A. Not that I remember.

7059

Q. In a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against E. I. du Pont de Nemours Powder Company and others, the Buckeye Powder Company has given the name of Donk Brothers Coal and Coke Company as one of the customers of the Buckeye Powder Company which the E. I. du Pont de Nemours Powder Company induced to abandon or stop the purchase of powder from the Buckeye Powder Company. Will you state whether or not the E. I. du Pont de Nemours Powder Company, or any agent or representative of

7060

Edmund C. Donk—Cross

that company ever induced the Donk Brothers Coal and Coke Company to abandon the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

7061

A. I would say that there is nothing to that. There ain't anybody induced me to quit that, unless I choose it; I never allow myself to be bamboozled with anybody, or by any concern or individual.

Cross-examination by Mr. Abbott:

Q. Did any person ever approach you, with an offer of better prices than you had been paying for your powder? A. Yes, from time to time, but I never paid attention to that; before I would accept anybody's proposition, I wanted the product to be satisfactory.

7062

Q. You did have offers of better prices? A. From time to time.

Q. Are you under contract with any company at the present time for the purchase of your powder? A. We have contracts that can be terminated on 30 days' notice. The exact details I haven't in mind.

Q. How long have you been under contract with anybody for the purchase of black blasting powder? A. Three or four years, maybe more.

Q. Were you under contract with anybody to purchase black blasting powder from 1903 to 1909? A. Possibly I was; I couldn't tell you without looking up my records; it is likely that we have.

Q. Have you got those contracts with you now? A. No, sir.

Q. Are they in your office here? A. I don't know that, I should have to look it up.

Q. Can you state whom the contracts were with, what company? A. No, only in a general way. I can give you a synopsis of how we have been buying our powder; I have been buying powder from the Miami Company for 15 or 20 years, and they were so unsatisfactory, that we had to pull away from them after they wasn't able to handle it to satisfy us to meet the price, we got powder from whom we best could, taking into consideration the quality, the delivery, and so forth, and the responsibility. Some of our men they preferred certain powders, taking, for instance No. 1 mine, and I think No. 2; they preferred du Pont powder. Rather than have a row with my men, I would get the powder from somewhere else, and I would say, "All right, I'll buy that powder." Then I, for awhile, bought du Pont powder from the Miami Company. After that, I believe we got hold of Mr. Waddell and got hold of some Buckeye powder. In the main it proved satisfactory. I didn't have much trouble with it, and as it went along, I had more grouches and more trouble and more kicks than a little; and then I changed to the Egyptian; and then they had a Powder Committee over there, and they said du Pont powder would suit them better than any other. "All right, I'll see about it," I said, and we had Mr. Spicer or some representative of the company, arrange for du Pont powder; one or two or three of them, I forget which; we had three mines. We are still using some du Pont powder and still using some Egyptian powder.

7064

7065

Q. What agents of the du Pont Powder Company called upon you, from time to time? A. Mr. Spicer.

Q. Mr. Spicer did? A. Yes.

Q. He is at present connected with the du Pont Powder Company, is he? A. I suppose so; I

7066

Edmund C. Donk—Cross

haven't seen him for about a year or a year and a half.

Q. Were you a stockholder in the Egyptian Powder Company? A. No, sir.

Q. You owned no stock? A. No.

Q. Did your company own any interest in it? A. No.

7067

Q. Do you know at this time how much Buckeye powder you consumed during the time you were doing business with them? A. No, I couldn't tell you that; the amount of powder used would depend upon the operations of the property. What we did do in that period, I can't remember.

Q. Do you remember how much coal you raised during the year 1905? A. No, sir, I could guess at it; but I guess that ain't what you want.

Q. Isn't it a fact that during that period you held the record of the State for coal production? A. For a short time we held the record; I don't know whether it was that time.

7068

Q. Your mine is a very large producer? A. Yes; it ain't a question of a mine, it's mines, there are three of them.

Q. Do you know Mr. Edwin H. Conrades? A. Yes, sir.

Q. What position does he hold in your company? A. Vice-President.

Q. Is he still Vice-President? A. Yes.

Q. Was he during 1903 to 1909? A. I think he has been Vice-President since he has been connected with the company; but he has nothing to do with the operation of the mines. The operation of the mines has been in my hands all the time.

Q. Do you know his signature? A. I think so.

Q. You say you do? A. I think I do.

Q. I show you a paper writing on what purports to be a letterhead of the Donk Brothers Coal Com-

Edmund C. Donk—Cross

7069

pany, dated January 29, 1904, and I ask you to state whether or not you recognize the signature attached to that? A. Yes, sir, I recognize it.

Mr. Abbott: I offer the paper in evidence.

Said paper is marked "Exhibit P. 58," and read to the jury, as follows:

(Letter Head, Donk Bros. Coal & Coke Co.)

St. Louis, Jan. 29, 1904.

7070

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your letter of January 25th to hand and contents carefully. noted. Your price is considerably out of line. There would be no use of sending further samples based on the price you quote us. You certainly are not taking into consideration the quantity of powder we handle, which is constantly increasing, owing to increase in our output.

7071

Yours truly,

Edwin H. Conrades,
V. Prest.

Q. I show you another paper written on the letterhead of the Donk Brothers Coal Company, dated St. Louis, May 3, 1904, and ask you to state whether you recognize that writing? A. Yes.

Mr. Abbott: I offer the paper in evidence.

Said paper is marked "Exhibit P. 59."

7072

Edmund C. Donk—Cross

Q. I show you another paper writing on the letter head of the Donk Brothers Coal Company, dated St. Louis, May 10, 1904, and ask you to state whether or not you recognize the signature to that paper? A. All right, that's his signature.

Mr. Abbott: I offer the paper in evidence. Said paper is marked "Exhibit P. 60," and read to the jury as follows:

7073

(Letter Head, Donk Bros. Coal & Coke Co.)

St. Louis, May 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

7074

We have not yet received a reply to our letter of May 3rd. What about it? Have you dropped the matter? We are ready to give your powder another trial and should have 20 kegs each of F. and FF. and 10 kegs of C. Powder (50 Kegs) to do this. If you are inclined to send this powder on and make us a competitive price, we may be able to do some business with you.

Yours truly,

Edwin H. Conrades,
V. Pres.

Bill to Donk Bros. Coal & Coke Co., Donkville, Ill., Care The St. Louis, Troy & Eastern R. R., E. St. Louis, Ill.

Redirect examination by Mr. Katzenbach:

Q. Whereabouts are your mines located? A. No. 1 mine is within a mile and a half of Collinsville, on the St. Louis, Troy and Eastern Railway, and Mine No. 2, which is located at Mayerville, about 15 or 16 miles, also on the St. Louis, Troy and Eastern Railway.

Q. That is, about 15 or 16 miles from St. Louis? A. Yes; and then there's Mine No. 3 at Troy, Illinois, 18 or 19 miles from St. Louis,—also on the St. Louis, Troy and Eastern Railway.

7076

Q. The mines are in what State? A. Illinois.

Q. And in what county? A. I think 2 and 3 are in Madison, and part of No. 1, and another part in Madison and St. Clair, but the shaft, I believe, is in Madison.

Q. I will just ask you whether you mean the shafts are in Madison County and part of the mine extends into St. Clair County? A. Yes.

Recross-examination by Mr. Abbott:

7077

Q. I will just ask you now, if, upon refreshing your memory, you can give an approximate estimate of the number of kegs which you consumed in your mining operations of black blasting powder during 1903 to 1909, per year?

Mr. Katzenbach: That is objected to as incompetent and irrelevant and not cross-examination.

A. From 25,000 to 30,000.

7078

Silas A. Shafer—Direct

Deposition of SILAS A. SHAFER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Shafer, where do you live? A. Assumption, Illinois.

Q. How long have you lived there? A. Since the 5th of May, 1872.

7079 Q. In what business are you engaged? A. In operating coal mines principally.

Q. Do you operate under your own name? A. No sir, the Assumption Coal Mining Company.

Q. Is that a corporation? A. Yes.

Q. Are you an officer of it? A. Yes, sir.

Q. What office do you hold? A. President and General Manager.

Q. How long have you been President and General Manager of the company? A. I have been President, I think, three years, and General Manager for about fifteen years.

7080 Q. Between the years 1903 and 1909 did your company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Who made the purchases of black blasting powder for the company between those years? A. I did.

Q. You made all purchases? A. Yes.

Q. Will you state whether or not your company purchased any black blasting powder in its mining operations? A. Yes.

Q. Of the Buckeye Powder Company, known as buckeye powder? A. Not to my recollection.

Q. Have you made any investigation or examination of the books of the company in any way to ascertain that? A. I personally? It was made by the secretary and by the stenographer.

Q. Was there any record of any purchase? A. None.

Q. Between the years 1903 and 1909 what kind of powder did you use in your mining operations?

A. Equitable powder.

Q. Between the years 1903 and 1909, did any agent of the E. I. du Pont de Nemours Powder Company ever have any conversation or communication with you respecting Buckeye powder? A. Not as I recollect.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, the name of the Assumption Coal and Mining Company has been given by the Buckeye Powder Company as a customer of the Buckeye Powder Company which these defendants that I have named induced to abandon the purchase of Buckeye powder. Will you state whether or not any of the defendants that I have named, or any agent or representative, ever induced the Assumption Coal and Mining Company to cease or abandon the purchase of Buckeye powder from the Buckeye Powder Company. (Objection overruled; exception allowed.) A. No.

7082

7083

Cross-examination by Mr. Abbott:

Q. In your answer to the last question do you mean to have it understood that you know all the persons who were agents or representatives of the parties named to you? A. No, sir.

Q. Answer the question. A. No, sir.

Q. You say you bought some Equitable powder? A. Yes, sir.

7084

Silas A. Shafer—Cross

Q. Were you under contract for the purchase of that powder? A. No, sir.

Q. You were never under contract? A. No, sir.

Q. Were you ever under contract with anyone? A. No, sir.

Q. Where were your mines located? A. At Assumption, Illinois.

Q. Anywhere else? A. I was interested in other mines.

Q. Where? A. At Moweakua, Illinois.

7085

Q. Were you the purchasing agent for those mines? A. No, sir.

Q. Who was? A. Mr. Hall was the superintendent down there mostly.

Q. Did you do any of it? A. No, sir.

Q. I show you a paper writing on what purports to be the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, April 29th, 1908, and I ask you to examine the same and state whether or not you recognize the signature attached thereto? A. Yes, sir.

7086

Q. You recognize that? A. Yes.

Q. Whose signature is that? A. That's my own. Said letter is marked Exhibit P 76, and read to the jury as follows:

The Assumption Coal and Mining Company,
Assumption, Ill., April 29th, 1908.

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:—Our contract for Powder at Moweakua must soon be renewed. We had some of your powder during the winter. Now at what price would you make a contract for another year? We might be induced to change. We see no reason why we should favor a Trust.

Yours very truly,

SILAS A. SHAFER.

Q. You refer in this letter, Mr. Shafer, to the fact that "We had some of your powder during the winter." Where did you have that powder you refer to in this letter? A. I am not sure. My impression was we had used some at Assumption, probably twenty-five or fifty kegs, but I have not been able to find any record of it.

Q. That was the powder you had in mind when you wrote this letter? A. I presume so.

Q. I will ask you to state, according to your best recollection, if you didn't purchase and pay for and use for the use of the Assumption Coal and Mining Company a total of seven hundred kegs of Buckeye powder? A. No, I don't think we ever did.

7088

Q. I show you what purports to be a letter written on the letter head of the Assumption Coal and Mining Company, and dated Assumption, Illinois, and I will ask you to state whether or not you had any communication with the Buckeye Powder Company with reference to entering into a contract with the Buckeye Powder Company for the purchase of Buckeye powder. A. I think I did.

7089

Q. For what point were you negotiating at that time for a contract to supply powder? A. My impression is that it was for Moweakua.

Q. Did you succeed in entering into a contract with the Buckeye Powder Company at that time? A. I don't think we did, although we may have, but not to my recollection.

Q. How many kegs of powder did you consume at the Assumption Coal and Mining Company during the years 1903 to 1909, inclusive, per year, approximately? A. Approximately?

Q. Yes. A. Approximately two hundred or two hundred and fifty.

Q. Per year? A. Yes, sir.

7090

*Silas A. Shafer—Redirect—Recross**Re-direct examination by Mr. Katzenbach:*

Q. Will you state whether the property or mines of the Assumption Coal and Mining Company were what is known as long wall mines or room and pillar mines? A. Long wall mines.

Q. In long wall mines is there as much powder used as in room and pillar mines? A. No, sir.

Re-cross-examination by Mr. Abbott:

7091

Q. In view of the direct examination I desire to call the attention of the witness to another paper writing, written on the letter head of the Assumption Coal and Mining Company, dated May 22, 1908, and ask him to state whether he recognizes the same, or the signature thereto. A. Yes.

Q. Whose signature is that? A. Mine.

Q. Was the letter written by you? A. Yes, sir.

Mr. Abbott: I offer the letter in evidence.

Said letter is marked Exhibit P. 77, and read to the jury as follows: (Insert B).

7092

The Assumption Coal and Mining Company,
Assumption, Ill., May 22nd, 1908.
Buckeye Powder Co.,
Peoria, Ill.

Gentlemen: On account of not having any business at Moweaqua we are not doing anything about the powder, but here we must have some powder of the same kind we use at Moweaqua. Must either haul a load down by team or get it direct from the mill. We use very little powder here as this is Long Wall work and is all undercut with the pick. But need 100 kegs now. At what price will you deliver 100 kegs here? And how soon? If satisfactory in price and time will telegraph you to ship.

Yours Resp.,

The Assumption Coal and Mining Co.,
Per **SILAS SHAFER.**

Silas A. Shafer—Plaintiffs—Direct

7093

Q. Referring to the letter Exhibit 77 for the plaintiff, I call your attention to the following language: "We use very little powder here, as this is long wall work, and is all under cut with the pit." To what mine did you refer? A. The mine at Assumption.

Q. And your inquiry for price for one hundred kegs which you needed at that mine related to the Assumption mine? A. Yes, sir.

(Counsel for the plaintiff makes the witness Plaintiff's own witness.)

7094

Direct examination by Mr. Abbott:

Q. Mr. Shafer you have just testified that you had a mine at Moweakua? A. Yes, sir.

Q. Do you use black blasting powder at that mine, or did you use it during 1903 to 1909? A. Yes, sir.

Q. What kind of black blasting powder did you use at that time? A. As far as I know, only the Equitable.

7095

Q. Were you under contract to purchase powder from the Equitable Powder Company, or other persons? A. I rather think they were.

Q. Have you those contracts with you? A. No, sir.

Q. Were you under contract during the whole period from 1903 to 1909? A. I don't know.

Q. Do you know what price was stated in the contracts? A. No, sir.

Q. Have you those contracts with you? A. No, sir.

Q. Do you know where they are? A. Yes.

Q. Where are they? A. At the office of Moweakua, Illinois.

7096

Silas A. Shafer—Plaintiffs—Direct

Q. At the office of the mining company? A. Yes, sir.

Q. Would you furnish the Commissioner with those contracts for insertion in this record? A. As far as I am able to.

7097

Q. I will ask you to state whether or not you ever had any negotiations with the Buckeye Powder Company for the making of a contract for the purchase of black blasting powder for use in your mines at Moweakua? A. It might be possible, but I don't recollect it.

Q. I show you a paper writing purporting to be on the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, June 6th, 1908, and I ask you to state whether or not you recognize the same and the signature attached thereto? A. Yes, sir.

Q. Whose signature is that? A. My own.

Said paper is marked Exhibit P 78, and read to the jury as follows: Insert "C."

7098

Assumption, Ill., June 6th, 1908.

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir: Is it really true as charged, that you have gone into the Powder Trust and are now a part of that combination? It would appear that such is the case by the looks of your letter to the Moweakua Coal Mining & Mfg. Co., dated the 4th. You made a price on the powder and we accepted your offer and now you back out. Why? I certainly expected a different move on your part. Is it possible that I have been deceived? You certainly knew what would be the freight rate here before you made me the quotation. And I certainly expect you to ship us the goods as you offered

Silas A. Shafer—Plaintiffs—Direct

7099

to do. I rather suspect that this move was not made by you but by some one in your office. Let me hear from you and greatly oblige as well as relieve my doubts. Yours Resp.,

SILAS A. SHAFER.

Q. I show you another paper writing, purporting to be on the letter head of the Assumption Coal and Mining Company, dated June 9, 1908, and ask you to state whether you recognize the same and the signature attached thereto? A. Yes, sir.

7100

Q. You recognize that? A. Yes, sir.

Q. Whose signature is it? A. My own.

Q. And is that a letter you wrote? A. Yes, sir.

Said letter is marked Exhibit P 79, and read to the jury as follows:

Assumption, Ill., June 9th, 1908.

Mr. R. S. Waddell, Jr.,
Peoria, Ill.

Dear Sir: Yours of the 8th in regard to the powder for Moweaqua at hand. It does not matter so much as to the time on the contract for the powder as we still have plenty for the present little work, but after I have worked so hard to throw the business to your company and then have it thrown down on such a flimsy pretext, is not to my liking to say nothing about its being more, much more than that. I can afford to go elsewhere to get the powder, but can your father have me do so and pose as he has in the past, as being opposed to the methods of the powder combine? I am at a loss to find a reason for his course if that would be his course. Awaiting his reply I am

7101

Yours Resp.,

SILAS A. SHAFER

7102

Silas A. Shafer—Plaintiffs—Direct

Q. I show you another paper writing on the letter head of the Assumption Coal and Mining Company, dated, June 19, 1908, Assumption, Illinois, and ask you to examine the same and the signature attached thereto, and I ask you to state whether you recognize the same. A. Yes, sir.

Q. Whose is it? A. Mine.

Q. And the letter is one you wrote? A. Yes, sir.

7103

Said letter is marked Exhibit P 80, and read to the jury as follows:

Assumption, Ill., June 19th, 1908.

Buckeye Powder Co.,
Peoria, Ill.

7104

Gentlemen: What is the reason we do not hear from your Pres. Mr. R. S. Waddell as promised by you Mr. R. S. Waddell, Jr., Treas., on June 8th? We want a car of 800 kegs of CCC powder shipped the first week in July so that we will not be out of powder there. Will you kindly reply at once? Or shall I go to Peoria to attend to this matter? I am certainly unable to understand why you do not send the contract to Moweaqua to be signed up. You certainly cannot afford to go back on your plain offer and our acceptance of same. I shall expect an answer soon. Yours Resp.

The Moweaqua Coal Mining & Mfg. Co.,

Per SILAS A. SHAFER,
General Manager.

Q. I show you another paper writing on the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, July 10, 1908, and ask

Silas A. Shafer—Plaintiffs—Direct

7103

you to examine the same and the signature attached thereto, and state if you know whose it is.

A. Yes.

Q. Whose it is, please? A. Mine.

Q. That is your signature and the letter was written by you? A. Yes, sir.

Said paper is marked Exhibit P 81 and read to the jury as follows:

Assumption, Ill., July 10th, 1908.

7103

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir: Your letter just received. I talked with the one of our company yesterday who was with me in Bloomington and we think favorably of the project, he went down to the mines at Pana last night and this morning to Centralia to look after those and will go to Chicago to-night, so I forward your letter to him at Chicago. We will be in Bloomington again next Thursday when you might call on us at the Illinois Hotel where we meet the miners for a day or two. I find that we use more powder than I had supposed we did.

7107

Yours Resp.,

SILAS A. SHAFER.

Q. Were you, or were you not under contract with any one for the purchase of the powder which you used in the mines at Moweakua? A. I presume we were. I am not sure.

Q. You are not sure? A. No, sir, I am not. I presume we were.

7108

Silas A. Shafer—Cross
Ivan B. Grant—Direct

Q. If you were under contract, have you any of those contracts at the present time? A. I presume they are in the office of the Moweakua Mining Co.

Q. Will you make a search for such contracts as you may have had during 1903 to 1909? A. I will instruct the superintendent to look after them.

Q. And if you find them will you forward them to the Commissioner? A. Yes, sir.

7109

Q. How many kegs of powder did you consume per year at your mines at Moweakua? A. I don't know. Several carloads. I don't know.

Q. By several how many would you think? A. Probably two or three carloads a year.

Q. As many as three? A. It might possibly be, I am not sure.

Q. How many kegs of powder are there in a carload? A. Usually eight hundred I think.

Cross-examination by Mr. Katzenbach:

7110

Q. The amount that you would consume would depend largely upon the extent of the mining operations for that year, would it not? A. Yes, sir.

IVAN B. GRANT, a witness produced on behalf of the Defendants, being duly sworn, testified as follows:

Direct examination by Mr. Katzenbach:

Q. Grant, did you ever have any connection with the Great Northern Fuel Company? A. Yes, sir.

Q. In what capacity? A. I was its General Manager from 1902 to the latter part of 1909, I believe.

Q. Where were the mines of the Great Northern Fuel Company located? A. At Novinger, Adair County, Missouri.

Q. Did the Great Northern Fuel Company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for the Great Northern Fuel Company? A. I did.

Q. Between the years 1903 and 1909, did you purchase for the Great Northern Fuel Company any powder known as Buckeye powder, made by the Buckeye Powder Company? A. I did, yes, sir.

7112

Q. Will you state when you purchased Buckeye powder? A. Well, no, I can't exactly; I was using an Austen powder purchased from the Tenk Hardware Company, and after that I signed a contract with the Buckeye Powder Company, along somewhere, I should judge, in the latter part of 1902, possibly in 1903. We used it for about a year, I should judge, all told, or a year and a half; I don't have any records with me.

Q. Did you use any of this Buckeye powder in the mines of the Great Northern Fuel Company? A. Yes, for possibly eighteen months, from one to two years.

7113

Q. You say that was purchased under contract? A. Yes, sir, part of it.

Q. After you had used this Buckeye powder in the mines, did you, during the time you were general Manager, make any change of powder? A. Yes, sir.

Q. Will you state any facts or circumstances relating to this change of powder? A. Well, sir, the first trouble we had leading up to a change, I had a committee of miners wait on me, and informed me they wanted du Pont powder. I told them they

7114

Ivan B. Grant—Direct

couldn't have it, because I was under contract with the Austen people. They told me I would have to make some arrangements to get du Pont powder; that they would burn up what powder we had in the magazine, and that they wouldn't burn any more Austen powder. I then began negotiations with the du Pont men; I don't know who it was that came up there; I think I wrote for the first man to come, and I talked with him, and finally cancelled our contract with the Austen people, who were very nice about it. We had some time to run, and I told them our men had refused to work unless they got du Pont powder, and they cancelled the contract, and I entered into a contract with the du Pont Powder Company and continued as long as I was with the Great Northern.

7115

Q. You changed from Austen to du Pont? A. Yes, sir.

Q. State why you didn't continue with the Buckeye Powder Company. A. My men wouldn't use it; they refused to use it.

7116

Q. After the Buckeye powder was used in your mine, did you ever have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. While it was being used there?

Q. Yes. A. Yes, I wrote down there and asked them to send an agent up when my men threatened to strike.

Q. That was the only communication you had with them? A. Yes, sir.

Q. Did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, I think not; I have no recollection of anything of that kind.

Q. In a suit instituted in the United States Dis-

trict Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company has given the name of the Great Northern Fuel Company as a customer of the Buckeye Powder Company induced by the defendants to cease purchasing powder of the Buckeye Powder Company; will you state whether or not these defendants, or any agent or representative of these defendants, ever induced the Great Northern Fuel Company to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. They did not.

7118

Cross-examination by Mr. Abbott:

Q. Will you state again what position you occupied in connection with the Great Northern Fuel Company between 1903 and 1909? A. General Manager.

7119

Q. During that entire period? A. I believe so, yes.

Q. Did the Committee of Miners that waited upon you making a demand for du Pont powder, give any reasons why they wanted du Pont powder? A. Yes, sir.

Q. What were those reasons? A. Well, the reasons were that they liked it better. I was a new man in the field; there were three companies there before I was, or two companies: the Rombauer and the Kansas City——

Q. There were two companies? A. Yes, and they had been burning du Pont powder all the time, exclusively, and I guess the men drifted over there to my mine, and they claimed they had better success with the du Pont.

7120

Ivan B. Grant—Cross

Q. You are sure you had a complaint about the Buckeye powder, are you? A. Yes, sir.

Q. Did you ever make a statement to anybody to the contrary? A. Did I do it?

Q. Yes. A. That I did not?

Q. Yes. A. No, sir.

Q. Did you ever make a statement that the Buckeye powder was very satisfactory? A. I might have, at one time; it might have been satisfactory at one time.

7121

Q. Did you ever state that it produced far better results in your mine than any other powder? A. Possibly.

Q. Was it true? A. If I made it, it was.

Q. Will you say you did make it? A. No. The chances are that I told my men that; I would imagine that is so.

Q. Upon what theory would you tell them that? A. Because I wanted them to use Buckeye powder.

Q. Would you make a mis-statement? A. I would take any legitimate means when I was tied up with a powder company that I didn't know whether or not they would let me loose or not.

7122

Q. I will ask you to look at that signature, and state whether or not that is your handwriting? A. Yes, sir, that is my handwriting.

Said paper is marked "Exhibit P-57 for identification."

Q. Who was the President of the Great Northern Fuel Company during the time you were Manager? A. Mr. Keefe.

Q. What relation, if any, did Mr. W. S. McCall hold? A. While I was Manager?

Q. Yes. A. I don't think any.

Q. What relation did he hold from 1903 to 1909? A. I don't think any; I was superintendent up to

1903, I think, when McCall went out, and Mr. Keefe became superintendent, and I became General Manager. Previous to that time, I think he was the head of the company, that is, the active head of the company.

Q. Wasn't Mr. McCall President of the Great Northern Fuel Company in 1905? A. I think not; no, sir, I think it was 1903 I succeeded as General Manager.

Q. If he signed himself as President of the Company at that time, he mis-stated the facts, did he? A. Well, I wouldn't say that either, because I haven't looked up the date; I think it was the first of 1903 that he retired; I think I can produce the document showing the time he retired, and I was appointed; not this morning, but I can do it, if necessary.

7124

Letter was offered and received in evidence as Exhibit P-57 and read to the jury as follows:

"Novinger, Mo., April 4th, 1905.

Mr. E. C. Burrows,
St. Louis, Mo.

7125

Dear Sir:

In reply to your letter of the 3d inst. beg to advise that since receiving your powder our mines have practically been shut down. Also all of the other mines in this field. Work has fell off here to about two days per week. However, what men have used the Buckeye Powder seemed to be very well pleased with it. At our mine #31 which is the hardest coal we have, the slack has been reduced about 15%. The difference at our mine #1 is not so great. Please accept our thanks for your kindness when you was at the mills, and I am personally of the opinion that we

2
3
7
5

7126

*Ivan B. Grant—Redirect
Defendants Rest.*

will be able to use your powder right along. However, will report more fully after we have used more of it.

Yours truly,

I. B. GRANT,
Superintendent."

7127

Q. About how many kegs of powder did your mine consume per year during the years 1903 to 1909? A. I should judge in the neighborhood of a car every couple of months; it would average that, I should judge.

Q. With what—per year, that would amount to about how much? A. Well, say a car every two months; that would be 800 kegs; that would be 4800 kegs, wouldn't it?

Q. About 4800 kegs? A. Somewhere in that neighborhood. There were times I don't think we burned that much, and sometimes we burned more than that.

7128

Re-direct examination by Mr. Katzenbach:

Q. Mr. Grant, you stated that you were desirous that Buckeye powder should be used in the mines. Why were you desirous of that; what were the reasons? A. The reasons that I wanted to force Buckeye in that field?

Q. Yes. A. Because I didn't want one company to have a monopoly of the field; I didn't think it was good business policy.

Q. Therefore, you were willing to make the statement that Buckeye powder was satisfactory? A. Yes, I wanted to keep the Buckeye in the field; I thought we needed them.

And thereupon, on the 21st day of January, 1914, the defendants rested.

PLAINTIFF'S REBUTTAL.

DAVID S. BREWSTER, called as a witness by the plaintiff in rebuttal, being duly sworn, testified as follows:

By Mr. Abbott:

Q. Where do you reside at the present time? A. Chicago.

Q. Where did you reside during the years 1904, 1905 and 1906? A. During 1904 and a portion of 1905, at Wilmington, Delaware; and in 1906, in Chicago. 7130

Q. Since then in Chicago; you have been in Chicago since? A. Yes.

Q. What is your business? A. I have been in the high explosives business, connected with the Trojan powder people.

Q. How long have you been connected with the explosives business? A. 22 years.

Q. Where did you begin your first connection with the powder business? A. Joplin, Missouri. 7131

Q. With what company? A. The Hercules Powder Company.

Q. When you were in Wilmington in 1904-1905, where were you employed? A. In the sales department.

Q. Of what company? A. The du Pont Powder Company.

Q. And what were your duties in the office? A. I kept the records for the competitive end of the business.

Q. What was that department known as, what was the name of it? A. The competitive division.

Q. Did you have anything to do with the organization of that division? A. I made it up, yes, sir, in 1903; began in August, 1903.

7132

David S. Brewster—Rebuttal—Direct

Q. I will ask you whether in the spring of 1905 you had anything to do with making an investigation concerning the prices for black blasting powder which obtained between the companies that were not then in the du Pont Powder Company, that were conducting business in the central district of the United States? A. I made a report from my records as to the prices that were being obtained at that time, yes, sir, by competitors.

7133

Q. From what data did you obtain the information regarding that report that you made? A. From data in the competitive division.

Q. And what was the nature of that data? A. Do you want a full—

7134

Q. (Interrupting) Well, describe it as fully as you think is necessary. A. Well, for each State, for instance Illinois, all competition, both black powder and dynamite, was kept in one set, headed in a file, a drawer for each State, and in that drawer was a town card, and behind the town card was a trade card denoting the name of the customer, the estimated monthly consumption, the price that they were paying for the material, and the date and name of the salesman who made the trade report.

Q. These sheets, then, contained information, did they, concerning prices for black blasting powder and dynamite that were made by the various companies that were not then owned by the du Pont Powder Company; is that right? A. Yes, sir; that is a fact.

Q. In the first question, in the first place, then, Mr. Brewster, I will ask you who it was that requested you to make up this report? A. Mr. J. A. Haskell.

Q. And under what circumstances did he make that request to you? A. He asked me to make such

a report, that it might be submitted to the executive board.

Q. How long did it take you to make that report?
A. I think, as I remember, the latter part of March I began it, and it took until along the fore part of May.

Q. When you made that report what did you do with it? A. Gave it to Mr. Dale Bumstead and Mr. Eugene du Pont, and the head of the western division, in which I worked.

Q. After you gave it to them do you know what became of it? A. They revised it, as I remember, and it went to the executive board, as I was told. 7136

Q. After that do you know anything about what became of the report? A. I do not, no, sir.

Q. Well, I will ask you to start with, Mr. Brewster, whether you know anything about a 95 cent price made to the Willis Coal and Mining Company on May 5, 1905. A. No, sir.

Q. You don't know as to that. I will ask you to take this Exhibit 1248 and look it over and state how many names on that list you can tell that you know anything about so far as the prices which are indicated there are concerned. 7137

The Court. (To the witness.) If you come across any that you know, just mention it.

Witness: Now what was the question?

(Question repeated.)

A. (After examination of the Exhibit.) No, sir.

Q. Do you remember whether or not shortly after your report was made and filed any change was made in the prices of the du Pont Company? (Objection overruled.) A. Yes, sir.

7138

David S. Brewster—Rebuttal—Direct

Q. Do you know anything about any steps that were taken by the du Pont Powder Company, or any of its officers, about the time you filed this report, with reference to making a price of 95 cents in certain districts of the United States? A. Yes, sir.

Q. From whom did you get that information? A. In 1905?

7139

Q. Yes. A. Before leaving Wilmington, the sales board sent a telegram to the Chicago du Pont agent and the Latfin & Rand agent——

Q. You spoke about the sales board. Were you on the sales board at that time? A. No.

Q. Who was on the board? A. Mr. Martinas, Mr. Farraday, Mr. John Matthews, Mr. Dale Bumstead, and Mr. Eugene du Pont, Mr. Patterson, and Mr. Patterson and Mr. Haskell. That is about all that I remember. There might have been one or two more, but I do not remember them.

7140

Q. From whom did you get your information in regard to this telegram? A. It came to my desk in the office.

Q. Now, then, what was that telegram that was sent out?

By Mr. Button:

Q. One minute. Where was your desk, where were you—in the west? A. Wilmington, in the Market House, if you are familiar with that.

By Mr. Abbott:

Q. What date was this? A. In the early part of May.

Q. What year? A. 1905.

Mr. Button: We object to his stating the contents of any telegram.

The Court: I am assuming that this is to tap his source of information.

Mr. Abbott: Yes, sir.

The Court (to the witness): This was in the office of the du Ponts, this telegram was received.

The witness: The information came to my desk.

The Court: No, I said this telegram.

The Witness: No, I don't know about the telegram, no, sir.

7142

The Court: Well, then, don't talk about telegrams.

Q. Well, what was this information you had on your desk? (Objection overruled.) A. It was information from the inside office, Mr. Bumstead's and Mr. Eugene du Pont's office, that a 95 cent price had been telegraphed to Chicago for black powder.

Q. And any other place? A. Chicago is all that I know of.

Q. Do you know anything about the contents of that telegram? A. It was authorizing a 95 cent price.

7143

Q. A general 95 cent price? A. A general 95 cent price—

Mr. Katzenbach: I object—

Mr. Button: I object.

Q. I will ask you to state whom that telegram was sent to? A. C. H. Vehmeyer, the Laffin & Rand representative; Ed. C. Rice, or E. S. Rice, the du Pont representative.

Q. Do you know anything about whether such a telegram was sent to any other branch of the du Pont Powder Company anywhere in the United States? A. Through the Western Division, yes, sir.

7144

David S. Brewster—Rebuttal—Direct

Q. What other branch office——

Mr. Button: How do you know that?

The Court (to the witness): You must know that. You must state what you know yourself.

The Witness: That is what I am doing.

Q. To whom? A. To——

Q. How do you know it; did you see it sent? A. No; I didn't see it.

7145

By Mr. Button:

Q. Did you see the telegram? A. I did in Chicago, yes.

Q. Did you see the one in St. Louis? A. No, sir; I didn't go to St. Louis.

By Mr. Abbott:

Q. Did you have any conversation subsequent to the time this telegram was sent to Chicago with Mr. Vemeyer regarding that telegram? A. Subsequent?

7146

Q. Yes, subsequent to that time? A. No.

Q. Did you have a conversation at any time with Mr. Vehmeyer in regard to that telegram? A. Yes.

Q. When was it you had this conversation? A. The following day after it was sent.

Q. I will ask you, Mr. Brewster, to state what the facts were at the time when you made your report so far as any prices which had been made to consumers of black blasting powder by the Buckeye Powder Company. (Objection sustained.)

Q. Well, Mr. Brewster, I will ask you whether or not you found you had any information in these various reports or other documents which you examined when you made up your report concerning prices which were made by the Buckeye Powder Company to consumers of black blasting powder. (Objection overruled.) A. Did I have other in-

formation? Q. No, any information; did you find anything in the records relating to those matters?

A. As to prices the Buckeye people were getting?

Q. Yes, sir. A. Yes, sir.

Q. Now, then, what were the facts which you had in your possession at that time concerning the prices the Buckeye Powder Company was making to the consumers of black blasting powder? (Objection overruled.) A. The prices that the Buckeye Powder Company were getting at that time, according to the report based on the information furnished by the salesmen, indicated that the Buckeye Powder Company were getting a bigger price than the du Pont people.

7148

Q. What was the price they were getting at that time? (Objection overruled.) A. They were getting \$1.15 and \$1.20, as I remember.

Q. That was the time when you made your report? A. Yes, sir.

Q. What information did you have at that time concerning the prices which the du Pont Powder Company were charging for their powder to consumers of black blasting powder in the same district? A. Except general knowledge, I did not handle that end of it. I did not handle anything but competitive reports.

7149

Q. I will ask you also to state whether or not you know anything about any prices that were made from time to time in competition with the following companies: The Equitable, the Austin and the Miami? (Objected to.)

Q. Was there at any time, then, within your knowledge, any price made to any consumer of black blasting powder in competition with the Equitable, Austin or Miami Companies? A. No, sir.

Q. Do you know anything about any prices that were made to consumers of black blasting powder

7150

David S. Brewster—Rebuttal—Direct

which were supplied by the American Powder Company? A. No, sir.

Q. Do you know anything about prices which were made by the du Pont Powder Company in competition with the United States and Egyptian Powder Companies? A. Except as a rule. I don't know as to the prices; I know as to the rule that was followed.

By Mr. Button:

7151

Q. Wait. Whose rule? Where did you get the information?

The Court: Let us have the source of information.

A. The sales board, the du Pont people. (Motion to strike the answer sustained.)

Q. You have spoken of a rule. I would like to have you say from whence you obtained information concerning that rule? A. The general understanding that we were to get all the competitive business

7152

we could.

Q. From whom did you get that general understanding? A. From the sales board.

Q. You mean the members of the sales board? A. That is what I was in business for.

Q. Yes. But I am trying to find out now whether this information came to you from the members of the sales board or whether you were present at the sales board meetings. A. I was never at a sales board meeting in my life.

Q. Then you got your information from what source—the members of the sales board?

A. If you will permit me, I will explain. Can I do that?

Q. From whom did you get the information? A. From the order of the sales board, to get what competitive business we could.

Q. Was that order in writing? A. I would not say how it was; I don't remember.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. Where do you live now? A. Chicago.

7154

Q. What is your business? A. Explosives.

Q. With what company? A. The Trojan Powder Company.

Q. What was Mr. Waddell's connection with the Trojan Powder Company? A. I could not tell you.

Q. Did he have any connection with it? A. I was not connected at that time.

Q. Then you know there was a time when he was connected with it? A. I do not, no, sir.

Q. Did you ever hear it? A. I have.

Q. How long do you understand he was connected with the Trojan? A. I don't know, sir.

7155

Q. What was his capacity with the company? A. I don't know.

Q. Did you ever hear? A. Never.

Q. You do not know anything about what his connection with the Trojan Powder Company was? A. No, sir. I have already answered to that.

Q. Where did you hear he had any connection with it? A. I say I don't know that he was connected with it.

Q. You say you heard he was. Who told you? A. Mr. Bronson.

Q. Who is he? A. He is the manager of the Trojan Powder Company.

Q. What did he tell you? A. He told me very little.

7156

David S. Brewster—Rebuttal—Cross

Q. Do you know when Mr. Waddell quit the employ of the Trojan? A. No, sir.

Q. When did you first know Mr. Waddell? A. I first knew Mr. Waddell about eighteen years ago.

Q. In Cincinnati? A. Yes, sir.

Q. And you worked for the du Pont interests for how long? A. Sixteen years.

Q. When did you quit them? A. In 1907, January 1st.

7157

Q. From 1903 to 1907, won't you tell us just what your positions were with the du Pont Company? A. From 1903?

Q. Yes. A. In August, 1903, I went from Chicago to Wilmington and organized the competitive end of du Pont's business—the competitive end. And I stayed there until November 11th, 1905. I resigned then. They would not accept my resignation and they sent me back to Chicago, where I stayed for a year, till 1906, and resigned again December 1st, 1906, effective January, 1907.

7158

Q. Who helped you organize this competitive business? A. Who helped me to?

Q. In Wilmington. A. At that time Mr. Maney, a man by the name of Maney.

Q. Just you two? A. That's all.

Q. Who was your superior officer in that respect? A. Mr. J. A. Haskell.

Q. You reported directly to him? A. Every month; I made a report every month.

Q. And you spent your time in Wilmington? A. All the time, yes.

Q. You had an office there with them, did you? A. Right in the sales department.

Q. These reports were in writing, were they? A. Always; nicely gotten up on a machine.

Q. And one a month? A. One a month, every month.

Q. This report that you have mentioned about the Buckeye prices was made in what month? A. Which report do you mean?

Q. The one you have been telling about in such detail. A. As I remember, it finished in May, 1905.

Q. Was it a long report? A. Yes, it was a big report. It covered all the competition.

Q. You got your information for that report out of records in the office? A. Out of records that were kept right at my desk in the files—

Q. The trade reports? A. No, sir; cards made from the trade reports. 7160

Q. From information sent in by salesmen? A. Yes, they said they were salesmen.

Q. Well, don't you know whether they were or not? A. I didn't know any of them, no.

Q. How long had you been in the business? A. Sixteen years.

Q. And you did not know any of them? A. I didn't meet them. They didn't come to Wilmington.

Q. You did not know any of them? A. I won't say I did not know any of them. 7161

Q. You just said so. Did you or not know any of them? A. Yes, I knew some, connected with the Chicago business.

Q. Who made these extracts on these cards from the trade reports? A. The lady stenographers.

Q. Under your direction? A. Yes.

Q. How many trade reports were there there? A. Several thousand.

Q. What territory did this report cover? A. It took as far west as Omaha, Denver, St. Louis, Cincinnati, and as far north as Minneapolis.

Q. Won't you name the states? A. West, east to Pittsburgh.

Q. Won't you name the states instead of the cities

7162

David S. Brewster—Rebuttal—Cross

—what states were embraced in this report? A. Will you give me a map?

Q. I have not any. They won't let me put one in.

Mr. Abbott: Maybe we will.

Q. (Mr. Button continuing.) Can you not name the states without having a map? A. No, not handy.

7163

Q. It would be too much work? I don't know that we need any map. Why can you not name the states? A. I want to get in order.

Q. Does it cover the Eastern states? A. No, just east of Pittsburgh.

Q. How far south did it go? A. It took in Texas.

Q. That was considered to be the Buckeye territory, was that the idea, in which they were selling? A. I don't know where they sold. They sold all over as I understand.

Q. Well, you did know at that time, did you not? A. I could tell, yes, sir.

7164

Q. Was not the object of this report to show what the Buckeye Powder Company was doing? A. Yes, sir.

Q. Then of course it was confined to the territory in which the Buckeye operated, was it not? A. Let me understand you. What did you say?

(The question was repeated by the stenographer.)

A. What was confined to it?

Q. The report you made. A. This report covered all the territory—let me make it so you will understand it. This report covered all the territory west of Pittsburgh except the West Coast and north to Minneapolis and south to Texas.

Q. Then the whole territory from Pittsburgh to

the West Coast, say to the Rock Mountains— A. Denver, Colorado. West of that belonged to the West Coast.

Q. And it was all for the purpose of showing what the Buckeye Powder Company was doing? A. For every competitor that was in the district.

Q. Oh, that was it? A. Yes.

Q. What other competitors were there? A. As I remember them, I will give them to you. The Excelsior Powder Company, Kansas City, with a factory close to Kansas City; the Senior Powder Company, close to Cincinnati; the Miami Powder Company, which was close to Xenia, Ohio; the Egyptian close to Marion, Illinois, and the Buckeye, which was at Peoria; the Austin, which was close to Cleveland, and the Equitable, close to Alton, Illinois. Now, that is the black powder. The dynamite—

7166

Q. We do not need to go into the dynamite. The United States? A. Yes, the United States was down near Terre Haute somewhere.

Q. Did you mention Burton? A. Never. The Burton was not doing business in my day.

Q. These companies were all competing for business at that time? A. Yes, sir.

7167

Q. And you had charge of the records that pertained to them, did you? A. To the competitive records, yes, sir.

Q. The competition had become pretty active, had it not, pretty fierce, during that time, say in 1905 and 1906? A. They were all working for business, of course.

Q. And to such an extent that it was pretty active? A. No, the prices were pretty fair, as I remember; there was not much cutting.

Q. Well, what did the general price get to, say in 1905 and 1906? A. \$1.05, \$1.10, \$1.15, they made most any price necessary to get the business.

7168

David S. Brewster—Rebuttal—Cross

Q. Then there was no general 95-cent price? A. Yes, there was.

Q. Which was it? A. The one I speak of was a general 95-cent price.

Q. You mean that the duPont Company was selling its powder to everyone at 95 cents? A. In specific territory; yes, sir.

Q. What territory? A. Chicago, for instance.

7169

Q. To everybody? A. A general price, as I stated to you, was made at 95 cents to cover Chicago territory.

Q. What do you mean by Chicago territory? A. Well, in Chicago territory was Illinois, Indiana, Wisconsin and North Dakota, Minnesota. I think that about covers it.

Q. During what period did this very general and widespread 95-cent price, duPont price, continue? A. I could not tell you. I left there in 1905.

Q. When did it begin? A. 1905.

Q. What time in 1905? A. In May, as I remember.

7170

Q. Did it not last until you got out to Chicago? A. I don't know. What do you mean by when I was out to Chicago—to live out there?

Q. You went from Wilmington to Chicago and stayed a year? A. In November this was now.

Q. I don't know when it was. A. I told you it was in November. I made two trips to Chicago, one in May, right after this price was made, and one in November, to live there. Now, what else do you mean?

Q. You went from Wilmington, where you had charge of this competitive division, to Chicago, where you stayed a year in the employ of the duPont Company? A. That was in November, now.

Q. 1906? A. 1906.

Q. Very good. Was it in effect then? A. I paid

no attention to the black blasting powder when I went back to Chicago. My business was dynamite only.

Q. So you don't know. Well, what was the latest date at which you know that this 95-cent price was in effect? A. In May.

Q. You simply know that one date? A. In May, 1905, was the time it was put in effect.

Q. And that is the latest you know anything about it? A. Yes.

Q. Do you mean to say that the duPont Powder Company was selling all its powder in that territory at 95 cents? A. No; I mean to say nothing of the kind. I don't know what they sold it at.

Q. What do you mean to say? A. I don't know what they were selling it at.

Q. What do you mean by their having a general price then? A. I mean this: That if I give you direct and explicit instructions to put a price in effect for a certain territory, certain scope of territory, that implies that you sell to that territory at that price.

Q. And in this broad territory that you are mentioning you say that there was a general 95 cents price, do you? A. I don't, sir; I say that I know only that it went to Chicago to stated territory which included Chicago.

Q. That is all of these States that you have mentioned? A. No, sir; I have taken you here in Montana, from there down to Texas; that is not in St. Louis territory.

Q. Chicago territory is not? A. No, sir.

Q. What does the Chicago territory mean? A. I don't know now what it is.

Q. What was it then? A. I have named it to you: Illinois, Indiana, Wisconsin, North Dakota, Iowa and Nebraska, I believe.

7174

David S. Brewster—Rebuttal—Cross

Q. Do you mean to say that your Chicago office had salesmen out through that territory authorized to sell powder in any one of those States at 95 cents in this period? A. I don't know what they did with the price; no, sir, I didn't make such a statement as that.

Q. Is not that what it means when you say that a general 95 cent price was given? A. I didn't say that; I don't know what they did.

7175

Q. I would like to know what you mean by that? A. I say a telegram was sent putting the 95 cent price in effect; I don't know what they done with it.

Q. Now then who sent that telegram? A. I don't know, sir.

Q. And your entire knowledge in regard to putting the 95 cent price into effect is gained from your reading of that telegram, is that it? A. No, sir; when I went to Chicago Mr. C. H. Vehmeyer, who had been with them twenty or thirty years—

Q. Wait a minute. We don't wish for anything of that kind.

7176

Q. Now then, Mr. Brewster, did you have any communication, did you ever have from Wilmington in regard to this 95 cent price, or did you see any outside of this telegram? A. Just as I sit at a desk over here tending to my duty and the Sales Board have their meeting and I enter the minutes when they come from the meeting; I get my part of it, that man gets his part and the other man gets his and we each know what is going on as is appearing in the minutes as they come out to us in this form and I know what is going on in there the same as you know what is going on in this Court Room.

Q. Yes, I do. A. Yes.

Q. Did you ever have a communication that came from Wilmington on the subject except this telegram on the Sales Board? A. Me, personally?

Q. Yes. A. No, sir; the files were there for me to look at.

Q. What files? A. I would not have personal knowledge.

Q. What files? A. The files that we kept to keep track of all the particulars of all the records.

Q. These trade reports? A. No, the file that contains all the information and the approval of the Sales Board of a price authorized to take effect, that would be in the files.

Q. That is the record of the trade board? A. No, sir; all letters written to you, for instance, as the customer, and we have them all in one file in which——

7178

Q. What did these letters refer to during this period? A. To business connected with the company, it was the subject matter.

Q. That is, they referred to prices, didn't they? A. Referring to anything that pertained to the trade.

Q. Did they refer to prices? A. Part of it; yes, sir.

7179

Q. And letters were coming in in May, June and July and all through 1905, weren't they, in regard to prices from Chicago? A. This file was a year or two old; some of them.

Q. Answer my question: Were not the letters coming in from Chicago all through that year in regard to prices? A. Yes, sir.

Q. The Sales Board sat there to authorize prices on application, didn't they? A. Yes.

Q. And during that year they performed that function, didn't they, all through 1905 while you were there? A. Yes.

Q. If an agent in Chicago wanted a price that was below the authorized price, he had to apply for it, didn't he, and have the Sales Board pass on it? A. Yes.

7180

David S. Brewster—Rebuttal—Cross

Q. And he did that all through 1905? A. I don't know after that report was made, I don't know what was bid.

Q. Now, during all this time, I understand your testimony to be that the du Pont Company had information that the Buckeye Company was selling its powder at \$1.15 and \$1.20, is not that your testimony? A. As I remember; yes, sir; the price was about that.

7181

Q. Are you sure about that? A. I have answered your question; I have not got the record in front of me; I am answering from memory.

Q. Are you pretty sure about it? A. I am answering from memory and that is as far as I will go.

The Court: Answer his question.

The Witness: I can't answer it.

The Court: You will have to answer it.

The Witness: I can't answer it except to say I don't know.

7182

The Court: He wants to know whether you feel sure from your memory?

The Witness: Oh, from my memory? Oh, yes, I feel sure from my memory.

Q. Pretty sure that the prices in there were \$1.15 and \$1.20 to anyone? A. No, sir; they varied.

Q. What were the limits? A. I don't know.

Q. What was the price the Buckeye Company made the Willis Coal and Mining Company in 1905 as disclosed by this record? A. I don't know, sir.

Q. Will you pick out one customer on this and state what the Buckeye price to that customer was in May, 1905? A. No, sir.

Q. You can't do it? A. No, sir.

Q. Can you look this list over and state whether it is not true that in May, 1905, the du Pont Company was selling the powder in the Chicago district

to ten times as many names as are on here? A. No, sir, I couldn't tell you.

Q. Will you try to answer that? A. I would not; I would not make the effort because I don't know.

Q. Can you look over it and see whether you think it is a complete list of the customers du Pont Company in the Chicago district in 1905? A. I wish I could but I can't.

Q. Well, you haven't looked at it. A. Yes, I did a while ago.

Q. You looked at one page of it. A. I have no idea what list of customers they have in that State or in that district. 7184

Q. About how many customers were served by this Chicago office of the du Pont Company? A. I don't know.

Q. About three or four thousand? A. I don't know, sir.

Q. You were there, weren't you? A. In the Chicago office?

Q. Yes. A. I had nothing whatever to do with the black powder end of the business when I went back to Chicago. 7185

Q. You did when you were in the Sales Department? A. I had charge of dynamite only.

Q. You were part of the Sales Department in Wilmington? A. Yes, sir.

Q. Now, what do you say from your knowledge gained in Wilmington as to whether these 400 customers, how they compare with the total number of customers in the Chicago district? A. I would not know; I have no material matter from which to form an estimate on.

Q. How many trade reports did you go over to make out this report? A. Several thousand came in there.

Q. Several thousand customers? A. No; dupli-

7186

David S. Brewster—Rebuttal—Cross.

cates; whenever a man went to the same customer three times a week he made a report on it.

Q. But you never got any knowledge from your examination as to how many customers there were in this territory out of your sales knowledge? A. No, sir; never fixed any number in mind.

Q. So that you could have an idea and say whether it was 400 or 4000? A. That is right.

Q. Are you equally accurate in your recollection of the range of prices that the Buckeye made? A. Yes; I think I know the prices.

Q. Do you know of any one customer in the Chicago district to whom the du Pont Company ever sold any powder at 95 cents? A. No, sir.

Q. You don't? In your examination of these files, did you read this letter at that time in them, sent on by Mr. Rice? (handing paper to witness). A. Sent on where, please, sir?

Q. Sent on to Wilmington. A. Yes. Now, what is it you want to know about it?

Q. I want to know if you looked that over during the time you were in Wilmington? A. I could not know that, that has been so long ago.

Q. Won't you look at this Exhibit A-525 and state whether that shows that there was a general 95 cent price authorized for that locality? At that time? (Handing paper to witness.) A. There is no—I don't know as it would be—there is no name here to which that has reference, no company, that is, no consumer.

Q. The Consolidated Indiana Coal Company; it is in Indiana. Mr. Rice authorizes a letter that encloses it? A. In Indiana?

Q. That is one of the States you mentioned, isn't it? A. Yes, I would rather think it was at that time out of Mr. Rice's jurisdiction; Mr. Spencer was following up the United States competition at

7188

that time; they didn't want Rice to go down in that territory.

Q. In June, 1905, just a month after the authorization of the general price that you are talking about—that is, this is June, 1905, you recollect? A. Yes.

Q. Now this letter from Mr. Forbes, purchasing agent of the Consolidated Indiana Coal Company, to Mr. Rice says: "Please allow me to thank you for your courtesy in taking up this matter of reduction in price on powder with your home office, and to state that I note you decline to meet the cut price of 95 cents." In June, 1905, if that letter is a correct copy, then, your statement is incorrect, Mr. Brewster? A. I don't know anything about that letter, I have told you—

7190

Q. I am assuming that this letter is correct, written at the time. If it is, your statement that there was a general authorized 95 cent price there at that time is incorrect? A. That trade is in Indiana, and in that part of Indiana possibly it may have—

Q. I don't want what they may have done, what do you know about it? A. I don't know.

7191

Q. You included Indiana as one of the States where this price prevailed which you say was a general price to meet the conditions there? A. To prove my statement, I will make another statement—

Q. No, sir, you will answer my question. If this letter is incorrect, your statement is incorrect. A. Positively no.

Q. They are both correct? A. Both could be correct; yes, sir.

Q. How? A. And I will explain why.

Q. All right, go ahead. A. Indiana was in charge of Mr. Spensley who was after the United States competition. Mr. Rice may have thought he could

7192

David S. Brewster—Rebuttal—Cross.

meet them best down in Indiana and the company would not give him the price of 95 cents to work Indiana on.

Q. Where would he get the authority? A. I don't know.

Q. Where would he have to go to get the authority in June, 1905, to meet the 95 cent price? A. They would not want Mr. Rice to make a price of 95 cents perhaps.

7193

Q. I understand you to say Mr. Rice had charge of that trade in May, 1905? A. Maybe so, maybe the company did not want—I don't believe that the Indiana trade was under his control at that time.

Q. You had forgotten that you had testified a few moments ago that Indiana was one of those States that had that general price? A. It is and Mr. Rice didn't have authority to work Indiana at certain times.

Q. And that is your explanation? A. That is my explanation.

7194

Q. The only one you have? Were the Egyptian and the United States and these other companies making prices through there? A. They had business there; yes, sir, through that territory.

Q. They were meeting the low prices, weren't they? A. I don't remember now what the price was.

Q. Your report covered them all? A. Everything.

Q. What do you think the price was of the Egyptian, we will say? A. Why, around Marion, it was about \$1.14 or \$1.15.

Q. During 1905? A. Up to the time that I made this statement; how far into 1905 it went, I don't know.

Q. The Excelsior likewise up to \$1.15 and \$1.20? A. The Excelsior I think got more money for their powder.

David S. Brewster—Rebuttal—Redirect.

7195

Q. Then they were paid \$1.25? A. They were off to themselves, they could get more money.

Q. That would be \$1.25? A. I don't remember just what it was.

Q. You don't remember that as well as the Buckeye price? A. Yes, I do; just about the same; \$1.20, \$1.25, depending on the locality.

Q. How high was the United States? A. They were about \$1.05 as I remember.

Q. Do you think your memory is pretty good on all these things? A. I think it is.

7196

Q. And just as good or just as bad as it is about the Buckeye? I take it that your recollection is all alike so far as its accuracy goes in regard to all these companies? A. I think I have got a fair recollection; yes, sir.

Q. My question was whether you had a better recollection of any one of them than you have of the others. A. I don't know that I have.

Re-direct examination by Mr. Abbott:

Q. Did anybody during the time after you had submitted this report and previous to the time when this telegram was sent out to Chicago ever make a statement to you as to the purpose or policy with reference to the then price of 95 cents which was—

7197

Mr. Button: I object to that.

The Court: You see that is so general and anybody—

Mr. Abbott: I mean any officer of the du Pont Powder Company.

Mr. Button: We think that is not re-direct.

The Court: Well, it should be some officer—to whom or to whose department it would go.

7198

David S. Brewster—Rebuttal—Redirect.

Q. Well, I will ask you then if Mr. Haskell or Mr. Bumstead or Mr. Eugene du Pont made any such statement to you? A. Yes, sir.

Q. Now state what it was that they stated to you and state which one of these gentlemen it was that made that statement to you. A. Well, the statement was made by Mr. Ferriday for one and Mr. Bumstead and Mr. Haskell and Mr. Patterson.

Q. Well, what did Mr. Haskell say to you? A. I won't attempt to say.

7199

Q. Well, why?

Q. (By the Court.) Do you mean that you have an objection other than the fact that you do not recollect?

A. Yes, that is my objection that I don't recollect the words used; I wouldn't attempt to use it.

Q. Do you remember what Mr. Ferriday said to you? A. I covered that in that one statement for all of them.

Q. Can you give the substance of what Mr. Haskell said to you? A. No, I won't.

7200

The Court: The point is whether now you can definitely say what a particular one of these persons named by you, said to you.

A. No, I won't go back five or six years and quote anybody's statement that length of time.

Q. That is because you don't recollect the exact language? A. I don't recollect the statement; I can give you the intent of the statement.

Q. Well, by "intent" do you mean the substance of it? A. The intent was—

The Court: No, no, the question is whether you mean by the use of the word "intent" the substance of the statement; that is, are you using the two words synonymously.

David S. Brewster—Rebuttal—Redirect.

7201

A. No, sir, I don't—I can't quote the statement, therefore I will make no attempt to quote it.

Q. Well, now, what do you mean, using your own definition of the term "intent"; what do you mean by that? A. The intent of the price that was made.

The Court: No, no, you used the word "intent." He asks you now what do you mean by that; how do you interpret—what meaning do you give to that word "intent"?

7202

A. I mean for a purpose—object in view—intention.

Q. Well, did Mr. Haskell state to you then his intent and purpose in having that price fixed?

Mr. Button: We object to that as leading.

The Court: In the first place, let the witness say what Mr. Haskell said, he is not required, of course, to say it verbatim. You can give the substance.

7203

Q. Well, can you do that, Mr. Brewster? A. Yes, sir.

Q. Well, then, do so.

Q. Do you know what he said to you in substance? A. In substance the——

Q. You do recall? A. Yes.

Q. I will ask you to state what it was he said in substance? A. That the competitors could not make powder at a profit of ninety-five cents.

Q. Anything else? A. Nothing else.

Q. Did he state to you anything in connection with the Buckeye Powder Company at that time? A. All the same—all competitors the same.

Q. Now, who were included within this term of 'competitors'?

7204

David S. Brewster—Rebuttal—Recross

Mr. Button: Did he give a list of them?

A. Embodied in the list—the statement I gave him of all the competitors.

Q. And that referred—will you repeat that list again? A. There was the Excelsior; there was the Senior; there was the Buckeye; there was the Egyptian. And the Equitable, the American and the Miami.

Q. Have you seen this report that you made Mr. Brewster, since you made it? A. The report?

7205

Q. Yes, this report which you say you made up at Mr. Haskell's— A. No, sir.

Q. Mr. Brewster, will you tell us what Mr. Eugene du Pont said to you about the purpose, if anything—about the purpose of making that ninety-five cent price? A. No, sir.

Q. You mean that you will not tell us? A. I cannot tell you, I don't know.

Q. You don't remember? A. No, sir.

Q. Well, now, then what did Mr. Bumstead say to you about that matter? A. In direct quotation?

7206

Q. No, to the best of your recollection, as a substance? A. To the best of my recollection, this price is low enough to get the business.

Q. What business did he speak of? A. The competitive black powder business at that time.

Q. Now, what did Mr. Ferriday say to you? A. Mr. Ferriday said nothing to me at that time; it was not in his district, his district was the Eastern division, mine was the central.

Q. Then you didn't get any information from him regarding that matter? A. Not direct information bearing upon that subject directly, no, sir.

Recross examination by Mr. Button:

Q. Mr. Brewster, where were the conversations you had with Mr. Haskell and Mr. Bumstead? A. It was general talk.

Q. Where? A. In the Wilmington office, in the sales office; I forget the name of the street; the old sales office there.

Q. In your office? A. The offices were all together; that is separated by board partitions; where I had a desk, part of them were, and part of them were in Mr. Haskell's room.

Q. This conversation with Mr. Haskell first, where did that occur? A. There were several conversations I had with Mr. Haskell at my desk, and one in his room.

7208

Q. When was the conversation? A. I won't say; I don't know.

Q. Well, was it in May, 1905? A. I think so; yes.

Q. Are you sure about that? A. Quite sure; yes, sir.

Q. When was the conversation with Mr. Bumstead? A. Just about the same time that I gave him the statement. That was, as I remember, early in May.

Q. Where was that conversation? A. In his room, next to the general sales room.

Q. What was Mr. Bumstead's position at that time? A. Assistant director of sales.

7209

Q. In charge of the central division? A. In charge of the central division.

Q. And Mr. Haskell was over him? A. Was the head of the sales department.

Q. Then you were under Mr. Bumstead? A. I was.

Mr. Button: That is all.

Mr. Abbott: That is all.

7210

Robert C. Bruce—Rebuttal—Direct

ROBERT C. BRUCE, called as a witness in behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Bruce, where do you live at the present time? A. Sarasota, Florida.

Q. Where did you live during the years 1903, 1904 and 1905? A. Joliet, Illinois.

7211

Q. What business were you engaged in at the time? A. In the stone, coal and powder business.

Q. What kind of powder did you use? A. In 1903 I used Buckeye powder——

Q. I mean as to the character of the powder; whether it was blasting powder? A. Blasting powder, and also the E. I. du Pont or Hercules dynamite.

Q. You have answered the question as to the kind of powder you used, saying that you were buying powder then of the Buckeye Powder Company? A. Yes, sir.

7212

Q. And buying dynamite of the du Pont Powder Company? A. Yes, sir.

Q. With whom did you have your business for the purchase of the dynamite you purchased of the du Pont Powder Company? A. With Mr. E. C. Rice and Mr. Ed Rice of the du Pont people.

Q. Where was Mr. E. C. Rice located? A. In Chicago, Masonic Temple.

Q. What was his position, if you know, at that time? A. Which Mr. Rice?

Q. You said Mr. E. C. Rice. A. Mr. E. S. Rice.

Q. What was his position, if you know? A. He was general manager, as I understood it, of the Chicago office.

Q. Of what? A. Of the du Pont Company.

Q. Did you at any time have any negotiations with Mr. Rice, or in his office, with reference to the purchase of black blasting powder; and, if so, describe what that was? A. I don't fully understand the question.

Q. Well, were you ever approached by any person in connection with the du Pont office at Chicago to induce you to buy black blasting powder of the du Pont Company? (Objection overruled). A. Before I had taken over the agency for the Buckeye powder I was buying powder from the Laffin & Rand people; but after taking on the Buckeye powder I had several conversations with different representatives of the du Pont people in regard to taking the agency of the Buckeye powder, buying the powder from them again——

7214

Q. About when was it you had a conversation with the representative of the du Pont Powder Company, if any, concerning the purchase of black blasting powder of that company? A. I will say it was in the fall of 1904.

Q. With whom did you have that conversation? A. With Mr. Ed Rice.

7215

Q. Who was Mr. Ed Rice? A. He was a brother of E. S. Rice and he had charge of the——

By Mr. Button:

Q. Are you speaking of your personal knowledge as to what he had charge of? A. Personal knowledge; yes.

Q. Where did you get it? A. From letters written to me from the du Pont offices, signed by their representatives and respective officers.

Q. What was it he had charge of? A. He had charge of the agencies, or, to put that right, he had charge of the consignment agencies of the du

7216

Robert C. Bruce—Rebuttal—Direct

Pont Powder Company out of Chicago; in other words, the agencies from which the powder and dynamite was placed on consignment.

By Mr. Abbott:

Q. You have testified that there were negotiations with you for the purpose of getting you to take the agency of the du Pont powder; is not that correct? A. Yes, sir.

7217

Q. At what point? A. Joliet, Illinois.

Q. And it was that kind of an agency you have just mentioned, a consignment agency? A. The consignment agency was on dynamite, while the powder was not; the powder was direct sale.

Q. I will ask you to state whether you had a conversation with Mr. E. S. Rice at any time with regard to the continuance of the purchase by you of dynamite. (Objection overruled.)

Q. Answer that. A. Yes, I had such a conversation.

7218

Q. State what that conversation was. A. The conversation was brought up—

The Court: No. You must be more specific. You see you cannot ask about any conversation he had with Mr. Rice, but some specific conversation.

Q. Did you have more than one conversation with Mr. Rice? A. I am speaking of one certain conversation.

The Court: I want you to be more specific. It is not that you cannot show any conversation—and when I use the word “any” I mean any particular one—wherein the question of dynamite was considered, but

Robert C. Bruce—Rebuttal—Direct

7219

simply whether he had a conversation with Mr. Rice in which Mr. Rice said unless he gave up Buckeye powder he could not have the agency of the dynamite; that is the only thing that is rebuttal.

Mr. Abbott: Very well. I will put the question in that way.

Q. I will ask you whether you had a conversation with Mr. Rice in which he said that if you did not cease using Buckeye black blasting powder he would refuse to sell you dynamite? (Objection overruled). A. I had a conversation with Mr. Rice——

7220

The Court: Say yes or no, and then you can explain it.

Mr. Abbott: Yes; answer that yes or no.

A. Yes, sir.

Q. Now you can explain.

The Court: You had better fix where and when, now.

7221

Q. When was this conversation? A. As near as I can remember, in the latter part of the year 1904.

Q. Where was it? A. In the office of the du Pont Company, in the Masonic Temple in Chicago.

Q. Now, what was the conversation? A. The conversation was one in which Mr. Rice asked me to give up the agency, or give up buying Buckeye powder——

Mr. Graham: What did Mr. Rice say?

The Court: Yes.

A. In which Mr. Rice intimated——

7222

Robert C. Bruce—Rebuttal—Direct

Mr. Graham: We object to that.

The Court: What he said, just put yourself in Mr. Rice's place and say what Mr. Rice said to you.

Q. State all the circumstances in connection with it.

Mr. Graham: Let him finish the conversation first.

7223

Mr. Abbott: Certainly. I think the witness should be advised, if your Honor please, that he does not have to remember the exact language.

The Witness: I am trying to put it in the language, in order to bring out the points.

The Court: No, put it in his language, mentally taking a picture of you being there and what took place before, keeping that in your mind, and when you come to this subject, then say what he said.

7224

The Witness: He asked for a direct conversation, and I had to bring this up in order to bring out that one point.

The Court: Bring yourself down to this point, and then if it is necessary to explain what he said previously you will be asked another question.

A. Mr. Rice stated to me that unless I quit buying the Buckeye powder that they would cancel my agency for the du Pont dynamite.

Q. Did you at any time have another conversation with Mr. Rice? A. Not with Mr. E. S. Rice.

Q. With whom was the other one? A. That was with his brother, Ed Rice.

Q. Where was that? A. That was also in the office in Chicago.

Q. When was it? A. It was along about the same time of year.

Q. Was there anything further said by Mr. E. S. Rice to you at this conversation that you have just detailed with reference to your relations to the Buckeye Powder Company or the relations of the du Pont Powder Company to the Buckeye Powder Company? (Objection overruled.) A. Yes, sir.

Q. Then, I will ask you, Mr. Bruce, whether Mr. Rice told you at that time that the du Pont Powder Company would spend hundreds of thousands of dollars, if necessary, to put Mr. Waddell and the Buckeye Powder Company out of business, or any similar statement? A. He made a statement—

7226

Mr. Button: One minute.

The Court: Can you say yes or no to that?

A. Yes, sir.

Q. Now state just what was said as near as you can recall. A. Mr. Rice stated to me—

7227

Mr. Graham: On that particular point?

Mr. Abbott: Yes—

A. (Continuing:)—that the du Pont people could and would put the Buckeye people out of business, regardless of the amount of money to be spent. I don't think there was a specific amount stated.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. What was the date of the suit that the du Pont Powder Company brought against you, when did they sue you?

7228 *Robert C. Bruce—Rebuttal—Redirect—Recross*

Mr. Abbott: We have not inquired about any suit.

The Court: No, but this goes into the *res animus*.

Q. When was a suit brought against you or your concern? A. I don't remember the date.

Q. About the date? A. I don't remember the date or the year.

Q. Some two or three years ago? A. More than that.

Q. About 1908? A. I would not say for sure what the date was.

Q. A suit was instituted, was there not? A. I think there was; yes, sir.

Mr. Button: That is all.

Redirect examination by Mr. Abbott:

Q. What was this suit about, Mr. Bruce? A. A suit with regard to dynamite bought and for which I refused to pay until certain commissions which were due me for dynamite sold on the Chicago Drainage Canal under an agreement with Mr. Oliver, then general manager of the Wilmington office, which they tried to prove at that time were not coming—

Q. What was the result of that suit? A. It was settled out of Court.

Q. Have you any animus or feeling of any kind against Mr. Rice on account of that suit? (Objection overruled.) A. No, sir.

Q. Do you know anything about whether Mr. Rice himself had anything to do with instituting that suit? A. No, sir.

Recross examination by Mr. Button:

Q. You paid a considerable sum of money to the

R. S. Waddell—(In Rebuttal)—Direct

7231

du Pont Company as the result of that suit, did you not?

Mr. Graham: Yes or no.

The Court: Considerable is not definite——

Q. Well, seven or eight thousand dollars? A. No.

Q. What amount?? A. I could not state the amount.

7232

Mr. Button: That is all.

Redirect examination by Mr. Abbott:

Q. You never objected to paying what was honestly due them? (Objection overruled.) A. No, sir.

R. S. WADDELL, called as a witness for the plaintiff in rebuttal, having been heretofore sworn, testified as follows:

7233

Direct examination by Mr. Abbott:

Q. You heard the testimony yesterday of Mr. Pierce, did you not? A. I did.

Q. And you also heard the testimony of Mr. Olin, which was given some weeks ago, as a witness for the defendants? A. Yes.

Q. Something was said by Mr. Pierce yesterday with reference to certain bed plates, and the statement was made by him that there was a crack in the bed plate. Will you tell the facts in regard to that matter. (Objection overruled.) A. There was in the bed plate of wheel mill No. 3 a small chilled crack, which was about 18 inches in length,

7234

R. S. Waddell (in Rebuttal)—Direct

scarcely observable to the eye. It was a hair line. But as a means of saving any shock that might come from an explosion to that mill and protecting it from spreading, increasing the crack, we put a band around the marginal plate which was 7 inches in thickness, a steel plate. We put a 7 inch band of wrought iron around that and fastened it with draw-bolts. We put it on very hot, red hot, and it shrunk on, tightening that, protecting the plate, making it serviceable.

7235

Q. Did you at any time have any difficulty with the bed plate after that? A. Not the slightest.

Q. Mr. Pierce also made some reference to a cylinder of the engine which had been cracked. What are the facts in regard to that matter? A. The cylinder was not cracked. It was a bed plate under the cylinder that was slightly cracked.

Q. Did it in any way interfere with the efficiency of the engine? A. No.

7236

Q. Was it ever repaired to your knowledge after the plant passed from your possession? A. No; we ran it four or five years without paying any attention to it.

Q. In regard to the manner in which you kept your charcoal, it was stated by Mr. Pierce that you kept it in something like a corn-crib. I will ask you to state what the facts were in reference to the manner in which you kept your charcoal. A. A part of that building in which we stored the charcoal had small cracks to allow the air to pass through. We had had an experience in putting charcoal into a tight building, where it could not receive air. We had had a fire from spontaneous combustion of the charcoal. After that we constructed our building giving slight air vents; but they were not wide cracks that would let in moisture, and the roof extended out over the sides so as

to thoroughly protect it. I should build another one just like it.

Q. Mr. Pierce stated that the boilers were not properly constructed, that you did not have enough of them, because it required time to clean the boilers and that you had to have shut-downs in order to do that cleaning. What were the facts in regard to that matter? A. We cleaned the boilers for four or five years, shutting down at midnight on Saturday night, and at noon on Sunday we had cleaned the boilers and had started up Sunday evening. We did not require three or four days, but three or four hours, as an ordinary rule.

7238

Q. Complaint was made about the character of your soda storage house. I wish you would state what the facts were with reference to your storage house and the character of the buildings. A. The storage house was a brick building with 18-inch walls, laid up with cement, a very solid, permanent building, with a six-inch concrete floor, laid on the ground or on cinders, a very substantial building, and put outside the powder line, that is, not in the line of buildings. It was on the hillside above, to protect it from fire. If nitrate of soda was stored in a wood building, or where it comes in contact with charcoal or wood, any kind of carbon, during a fire, if water is thrown upon it makes a violent explosion, just as it would if it were then finished powder, and we would be prevented from using water on the line we had for protecting our buildings from the hydrant in case of fire if our soda was stored there. So we stored it on the hillside above, in a fire-proof building.

7239

Q. That soda house was kept, maintained, by Mr. Olin after the plant passed from your possession? A. Yes, as long as I knew it, a year and a half afterwards.

7240

R. S. Waddell (in Rebuttal)—Direct

7241

Q. With reference to the horizontal press which Mr. Pierce stated had a crack in it somewhere, which he never saw, tell us what the facts were with reference to that matter? A. No one ever saw a crack in it. There was no crack in the cylinder at all. There was a minute sand hole that we were not able to see with the eye. We could find it with a glass. Under severe pressure, a pressure of 600 tons, the heaviest pressure that was on the cylinder, when we were using oil, it would let out a vapor,—the gasoline or the lighter parts of the oil, would come from this hole. Our men ordinarily stopped it by taking the peon of a hammer and hitting it. They closed it up.

Q. Where was this press purchased? A. It was purchased of the Allentown Foundry Machinery Company.

Q. What was the factor of safety of that press? A. Seven.

7242

Q. And how much pressure would that allow before any injury would result? A. I ran it up to a thousand pounds on the gauge, and the limit we always used, the highest limit was 6,000 pounds. I ran it up to 10,000 pounds.

Q. Was this factor of safety guaranteed? A. Yes, by the Bethlehem Steel Company.

Q. As to those gear wheels, Mr. Pierce stated that the heads of some of them were too light. What are the facts in reference to that? A. The gear wheels?

Q. Yes, gear wheels at glaze. A. The glaze barrels, he said the heads were too light. The heads had been ordered from the same people that made the heads for glaze barrels for the Egyptian Powder Mills, where Mr. Pierce had operated; but we took out the heads that that company had delivered us and put in ones of more than double strength, the ones that were in there when I sold the plant.

Q. Some criticism was made of the condition of the wheel mills with reference to the clutches, motors, and I-beams. I wish you would describe what the facts were in reference to those matters. (Objection sustained.)

Q. Then, what was the fact so far as these clutches were concerned? A. It is necessary for mills operated like Mr. Pierce has been accustomed to operate, by a main shaft, to have a clutch to throw in the power, but it is wholly unnecessary where you have a motor, where you can pull a switch. We had lines stretched along for fifty feet above or below our motor, so that a man approaching a mill could take a rope and he could shut his motor off, such as they did in the kind of mills where they work from a driving shaft.

7244

Q. Was that method of handling that machinery, wheel mills, continued after the plant was purchased by Mr. Olin? A. We only had a clutch on one mill, that was on No. 4. That came with the mill from Prox & Brinkman at Terre Haute. We had had a clutch in, but we did not use the clutch. We used the motor.

7245

Q. Was there any change made in the method of operation of these various wheel mills after the time you disposed of the plant to Olin? A. No. I ran it a year for Olin without making any changes.

Q. In regard to the separator, a great deal of testimony has been given both by Mr. Olin and by Mr. Pierce with reference to your separators. I wish you would describe to the Court and jury exactly what these separators were, how they were arranged, and what, if any, changes were made by Mr. Olin after he took possession of the plant, in the separators. A. Both of them were boxes about 16 inches high on the side. The Buckeye separator was 32 inches wide and 100 inches long. Our screens in the Buckeye separator were one above

7246

R. S. Waddell (in Rebuttal)—Direct

another, slipped in at the back end, the screen surface was 32 inches by 96 inches, two and one-half feet by eight feet, perforated metal. The side perforations were exactly the same size used for all powder mills for sizing powder. The box that Mr. Olin sent us was 24 inches wide instead of 32, and 48 inches long instead of a hundred. His screen surface was just one-third the square inches of the screen surface we had in the Buckeye. Both separators were driven by a shaft, with eccentrics on the shaft, with a one and one-quarter inch throw; that is, they moved the box sideways an inch and a quarter from the surface, five-eighths from the center each way. Both of them were run at the same speed. Mr. Olin used in his separator wire cloth, and the wire cloth, the same sized mesh of the diameter of the holes that I had in the perforated metal. Our metal was very thin, made of zinc, 20-gauge, and the size perforations were exactly the same; that is, 500/1000 of an inch for CC; 400/1000 of an inch for C; 300/1000 of an inch for F, 200/1000 of an inch for FF; 125/1000 of an inch, or an eighth of an inch for FFF, and then the dust below that. The powder was dropped on the end of the top screen and shaken down over that screen and passed out at a spout for that special screen. The next sized grain passes off the next and goes off as a separate chute, into a separate bin. So there are six bins and there is a bin for each screen that goes off, separating the different sizes, and it is an utter impossibility to take a coarse grain that has passed off of an upper sieve and put it into a finer grain. The finer grain would not travel eight feet, it being shaken all the time, sifting, and passed off with this coarse grain. There is a possibility always of some fine grains being carried on the top of coarse grains and being carried over, but that is trivial.

7247

7248

R. S. Waddell (in Rebuttal)—Direct

7249

Q. What was the object, if you know, of the installation of this new separator by Mr. Olin? (Objection overruled.) A. That separator was sent to the mills by Mr. Olin about March, the first of March, 1909. He bought the mills September 19, 1908. It was a small separator to be installed for the separation of rifle powder. He never separated a grain of blasting powder on anything but the Buckeye separator during the year I remained with the Western Powder Company.

7250

Q. Then he continued to use the same separator which you had for the making of black blasting powder? A. Exactly the same for every pound he made during that year. He commenced with rifle powder the first of May.

Q. You have stated that the plant was purchased by Mr. Olin, I believe, on the 18th of September, 1908. You took possession then? A. Yes, sir.

Q. When did he begin running? A. About the 10th of October, 1908.

Q. Was anything done in any way whatever for the purpose of putting the plant into a different condition between the time Olin took possession and the time he began running? A. Nothing but cleaning it up and cleaning the boilers and getting everything ready to run. There were no repairs put on.

7251

Q. Mr. Olin stated on his examination that he preferred another method of unloading soda from that which you had because it was a more economical arrangement. Will you state what the facts were with regard to your method of unloading soda in common use in powder mills? A. That depends upon the location of the mills with relation to the railroad track, whether you have storage below the track or above it. Our plant was on a level higher than the railroad tracks. We had a switch in. We had to go up the hill or else around the hill into

7252

R. S. Waddell (in Rebuttal)—Direct

the powder mills. There was only one thing we could do—to go up—and we used an incline, which was very cheap. Our car from the soda house came down. It was a flat top car. The lower part of it was higher than the upper, so as to bring it to a level, and when it arrived at the railroad car it was on a level with the car door, and we trucked the soda, it comes in 200 pound bags, right on to that car, and stood the bags up, and we would take up 12 to 18 bags up to the soda house, rip it open and dump it. I think it was exceedingly economical.

7253

Q. Do you know when the method that Mr. Olin subsequently put in for that purpose was installed?

A. Yes, sir.

Q. When? A. About 1911.

Q. What, in your judgment, was the advantage, if any, of that method over the method which you had had? A. I think it was very much more expensive and not so satisfactory. It required more handling.

7254

Q. Mr. George Westerly, who was one of the witnesses who testified here by deposition, testified that he bought one hundred kegs of Buckeye powder in 1907 of an agent by the name of Foster. Did you ever have an agent by the name of Foster? A. No; I never heard of him.

Q. Mr. Lawrence Higbee testified that a Buckeye agent, not naming him, went around and sold powder to the men after he had bought some powder of the Buckeye Powder Company. I would like to ask you whether or not any person was authorized to act for the Buckeye Company as agent to make any such sales as that, to make sales to the men in the employ of operators? A. No.

Q. Very well, there was no agent of the Buckeye Powder Company that sold any powder under those circumstances? A. No, we never had a man there.

Q. The names of Jones and Peppard have been mentioned here in connection with a number of depositions as persons who were agents of the Buckeye Powder Company and who from time to time made sales to those persons. What are the facts with regard to any agency of Jones and Peppard, so far as Buckeye Powder is concerned? A. Jones and Peppard were two coal miners. They were cousins to each other. They had a little coal mine in one of the hills near Peoria and during the summer months when they did not operate their mine they went around and tried to sell powder at other mines in that locality. Beginning about the 1st of May, 1905, I paid Jones \$3 a day, until, I think, the 1st of July, 1905, about a month and a half or two months; and Pepper was with us I think three months at \$3 a day. After that, after they ceased, and during that time, they would go to each of these little mines in East Peoria, trying to sell powder. I gave them a net price, so much at the mill, and they made all they could make above that. In order to insure our getting paid for it and to carry the account, do the bookkeeping, we charged the powder at what they sold it directly on our books against the customer. If they sold it at \$1.10 and we had given them a dollar price f. o. b. the mills, they made the ten cents, and when we collected that we would give that extra commission to Jones or Pepper. We never had to pay them anything. We gave it all away. They visited these mines and sold these little lots of powder about which we had to take back to settle up, or get it shipped back to the mill.

7256

7257

Q. You heard the testimony of Mr. Thrush, did you not, given on the stand a few days ago? A. Yes.

7258

R. S. Waddell (in Rebuttal)—Direct

The Court: You had better give his Christian name. There were several Thrushes.

Mr. Abbott: This was Mr. Alec Thrush.

Q. (Continuing): You heard his testimony with reference to a conversation which he said you had with him, in which you stated that you desired to employ him for certain purposes in a certain mine on a certain basis, did you? A. Yes.

7259

Q. Now I would like to ask you to state what are the facts with reference to any conversation of that character you had with him. A. I employed Mr. Thrush at \$1 a day to go about the mines of Applegate & Lewis after his day's work was done, to assist other men, other miners, in the proper use of Buckeye powder. He was a very successful miner with that powder. I agreed to pay him a dollar a day. He was employed for thirty days. I paid him \$30 for that work, and Mr. Thrush then sent me—

7260

Q. Wait just a moment, please. Mr. Thrush's statement to the effect that you employed him two months is or is not correct? A. No, it is not. Thirty days, thirty dollars.

Q. I show you a paper writing marked Plaintiff's Exhibit 1421 and ask you to look at it and state whether you know what it is. A. (After examination) That is the voucher.

Q. State whether you know what it is. A. Yes, I know.

(Paper was received as an exhibit and marked Plaintiff's Exhibit 1421, and read to the jury as follows):

R. S. Waddell—(In Rebuttal)—Direct

7261

Accounts Payable.

Buckeye Powder Company, In favor of
 Mining and Blasting Powder, Name—A. Thrush.
 Monroe and Main St. Peoria, Ill.
 Address——Hanna City, Ill.

1906.	Description	Invoice No.	Amount Total	Acc't. No	
Oct. 22	For introducing Buckeye Powder in mines of Applegate & Lewis Coal Co.		30.00	G. E.	7262
	\$30.00		Oct. 22, 1906.		

Received of Buckeye Powder Company Thirty
 dollars in full of above account, A. Thrush.

* * * * *

Accounts Payable.

Buckeye Powder Company,

Month of	Oct. 1906	No. 678	
Voucher Record Folio.	Distributed.	Amount \$30.00	
Cash Book Page.	Audited	Check No. 2373	7263
In favor of			

A. Thrush.

Division.	Acc't.	No.	Amount.	Total.
Gen'l Expense.				

Q. This employment of Mr. Thrush in that capacity was with the consent and knowledge of the owners of the property, was it? (Objection overruled.) A. At the request of Applegate & Lewis.

Q. Did you have any further conversation with Mr. Thrush at or about the time you made this payment to him which has been referred to here?
 A. Yes.

Q. What was that conversation?

7264

R. S. Waddell—(In Rebuttal)—Direct

The Court (after argument) : Of course it must relate to some particular conversation.

Q. Well, any conversation with Mr. Thrush relating to the employment of Mr. Thrush in Applegate & Lewis' mine. A. Yes; I had such a conversation.

7265

Q. What was that conversation? A. Mr. Thrush said that he did not think I was paying him enough and said if I would give him \$50 a month—what his brother was getting from Dooley Brothers, that he could make an arrangement with his brother to let one-half du Pont powder and one-half Buckeye powder be used in that mine. I told Mr. Thrush I would not pay a nickel and I didn't require his services any longer. We ceased at that time. I did not make any offer to him of any commission. I quit.

Q. You heard the testimony of Mr. Rice, who was on the stand in behalf of the defendant a few days ago, did you? A. Yes.

7266

Q. You heard his testimony with reference to a certain conversation which he alleged he had with you at Kansas City in 1901 or 1902, I believe? A. Yes.

Q. I will ask you to state, then, whether at that time you had any persons or parties at that handicap meeting? A. Yes.

Q. How many? A. I took thirty men with me, shooters, to the Kansas City tournament.

Q. Do you know whether Mr. Rice had any persons or a party of persons at that time as his guests? A. He had about sixty from the Chicago district.

Q. What kind of cars were there that were used on this line that ran to the place where the handicap meeting was held, and from there to Kansas City? A. They were simply street cars, very short

cars. That was the end of the line, the stub end of the line, at the bridge where we held the tournament.

Q. And how were the seats arranged in those cars? A. A seat on each side.

Q. With an aisle in the center? A. An aisle in the center.

Q. What was the condition of those cars with respect to their being crowded or otherwise whenever you traveled on them? A. All that could hang on to the car were there all the time, when we were going home in the evening, about 700 men, moved by one little railroad.

7268

Q. Did you yourself participate in the handicap? A. Yes; I shot in all the handicaps.

Q. Did you have your own shooting paraphernalia with you? A. Yes.

Q. And carried it back and forth with you? A. Yes, as all sportsmen did.

Q. Did you or did you not sit in one of these seats with Mr. Rice? A. No; I didn't mix with Rice at all.

7269

Q. Did you at any time while you were on a car such as you have described, or any other car, have any conversation with Mr. Rice whatever? A. No, none.

Q. Will you state what is the condition of the coal producing trade within a radius of ten miles of Peoria, if you know? A. Within ten miles of my mills the total consumption of powder every year would be 12,000 kegs.

Q. Within a radius of 20 miles, what would it be? A. 50,000 kegs.

Q. Within a radius of 30 miles, what would it be? A. 55,000 kegs.

Q. Within a radius of a hundred miles what

7270

R. S. Waddell—(In Rebuttal)—Cross

would it be? A. That would take in the Springfield district, which is outside the Peoria district.

Q. Then, within a radius of 75 miles.

The Court (to the witness): Within a radius of so many miles but excluding that which falls within some other district than the Peoria district.

7271

A. 85,000 to 95,000 kegs a year.

Q. And that is all told, whether under contract or otherwise? A. Yes.

Q. Do you know how much of that was under contract during 1907? A. Yes, sir.

Q. Was it possible, Mr. Waddell, under conditions which have been stated by Mr. Haskell, the testimony which has been read to you, that you could have operated your mills at a profit with that business, had you secured all of it? (Objection overruled.) A. No. For this reason: May I explain?

7272

Q. Yes. A. Mr. Haskell was wrong in stating that my soda was contracted at a low price. It was not. I could not make powder and sell it at a profit within the Peoria district at 95 cents.

Q. Did you make any effort to operate your mills to their capacity during that period, Mr. Waddell? (Objection overruled.) A. I operated the mills to the utmost capacity that I was able to market my powder at all times, from the time I started until I sold out.

Cross examination by Mr. Button:

Q. In speaking of this nitrate price, as far as you went, what percentage of nitrate—95 per cent or 96 per cent—were you referring to? A. Nitrate of soda?

Dale Bumstead—(In Sur-Rebuttal)—Direct

7273

Q. Yes. A. I was speaking of 96 per cent. There is a difference ordinarily of $2\frac{1}{2}$ cents or 3 cents between 95 per cent and 96 per cent nitrate of soda.

Q. Which were you speaking of? A. 96 per cent, the maximum price being \$2.75 in 1907, and I think I have had a quotation as low as \$2.25 in the fall of 1907 or late summer.

Mr. Button: I think that is all.

7274

DEFENDANTS' SUR-REBUTTAL

DALE BUMSTEAD, called by the defendants as a witness in sur-rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. Chicago.

Q. You are an employe of the du Pont-de Nemours Powder Company? A. Yes, sir. 7275

Q. Were you in the years 1905 and 1906? A. I was in the employ of the company, but not in Chicago during those years.

Q. Where were you during those years? A. In Wilmington.

Q. What was your position? A. Assistant director of sales.

Q. Of any particular division? A. Of the Central Division.

Q. Do you know a man by the name of Brewster? A. Yes, sir.

Q. What is his name? A. David S. Brewster.

Q. Was he working there then, or a part of that time? A. Yes.

7276 *Dale Bumstead—(In Sur-Rebuttal)—Direct*

Q. In what position? A. Clerk in the office.

Q. Did he organize any competitive division there himself? A. I am sure I don't know as to that.

Q. Was he under you? A. He was.

Q. Was Mr. Eugene du Pont there also? A. Yes, sir.

Q. What was his position? A. He was also an assistant director of sales.

Q. Was he under you? A. He was associated with me.

[7277 Q. In May, 1905, or thereabouts, do you recollect some 95 cent prices being made in the Central States? A. I do.

Q. Was that a general price? A. No, sir.

Mr. Abbott: I object to that in that form. I think the witness ought to be interrogated with reference to the number.

The Court: This is sur-rebuttal. You will have to be more specific; you cannot be as general as that.

7278 Mr. Button: I had understood that Mr. Brewster testified it was a general price.

Q. Then, was this price made to everybody in any particular State? A. It was not.

Q. Was it made to everybody in Illinois and Indiana? A. It was not.

Q. Was there any telegram sent by you or any one, to your knowledge, authorizing any such general price at that time? A. No, sir.

Q. Or at any other time? A. No, sir.

Q. Did Mr. Brewster have a conversation with you at Wilmington some time about May, 1905, about the purpose of some alleged 95 cent price, in which in substance you stated to him that this 95 cent price was low enough to get the business of the competitive black powder companies, and so forth? A. No, sir.

R. S. Waddell—(In Rebuttal)—Cross

7279

Q. Nothing of that sort? A. I recall nothing of the sort.

Q. How were these prices made; that is, the 95 cent price—such as were made; what was the *modus operandi* there? A. The field representatives of the company made application to the assistant director of sales in charge of any division of business for permission to make a price. The assistant director of sales presented the matter to the sales board, and the sales board in turn decided whether or not such application would be granted.

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Q. Were these 95 cent prices, such as were granted, granted in accordance with that machinery? A. They were.

Cross examination by Mr. Abbott:

Q. Were you the only person in connection with the business of the du Pont Powder Company at Wilmington who would have authority to send out a telegram in reference to these prices? A. No.

Q. Who else would have that authority? A. Mr. Eugene du Pont and my superiors.

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Q. Who? A. Mr. Eugene du Pont, my associate, or my superior.

Q. And who were your superiors? A. My superiors were Charles L. Patterson and J. A. Haskell.

Q. Do you know whether either of these other gentlemen whose names you have given here sent out any such telegram at that time? A. I do not.

Q. And you say absolutely that it was not a general price that prevailed in these States? A. It was not a general price.

Q. It was made only to specific customers? A. Yes.

Q. You testified in the Government case, did you not? A. I did.

Q. Do you remember testifying as follows: "Q.

7282 *Dale Bumstead—(In Sur-Rebuttal)—Cross*

What territory did the price of 95 cents prevail in?
 A. It prevailed in Illinois and Indiana. Q. Illinois and Indiana? A. Yes, sir. Q. What was the price per keg in other territories, other districts?
 A. The price per keg in other districts I cannot recall, except possibly the State of Iowa, and that was \$1, as I recall it." Did you so testify in the Government case?

Mr. Button: I would like to see that.

7283

Mr. Abbott: Here it is, in the Government record.

C. Can you answer that question? A. Not directly.

Q. Why not directly? Can you not answer that question? A. I think I made that statement. The statement that the price prevailed does not mean that the price was general.

(Motion to strike out sustained.)

7284

Q. Did you have anything to do with requesting Mr. Brewster to make a report on competitive conditions about that time, May, 1905? A. No doubt.

Q. Did he make such a report at your request? A. He made many reports.

Q. Did he make a specific report at your request concerning competitive conditions which prevailed about 1905? A. He made many reports.

Q. Well, to whom? A. He made many reports to me.

Q. Did he make a certain specific report, which took him a period of several months, at that time? A. I don't see how I can answer that, unless—

The Court: At one particular time—

A. (Continuing:)—you tel! me—

Dale Bumstead—(In Sur-Rebuttal)—Cross

7285

Q. Mr. Abbott (continuing): From March, 1905, to May, 1905? A. I reply that he made a number of specific reports.

The Court: During that period?

The Witness: The time, please?

Mr. Abbott: I beg your pardon?

The Witness: The time within which you wanted to know?

Q. How often was he required to make a report? 7286
A. Whenever I asked for it.

Q. How often did you ask him? A. I am sure I don't remember.

Q. Can you give an idea? A. No.

Q. Why can you not? A. Because I asked him for reports frequently.

Q. Tell me how frequently. He was under your control, you say. Tell us how frequently? A. Whenever I wished a report as to such conditions I asked him and he gave it to me.

Q. Now, you can tell us about how often you asked him to make such reports? A. I cannot. 7287

Q. Not at all? A. Not at all.

Q. I show you Plaintiff's Exhibit 1437 and ask you to state whether that is the report you asked him to make? A. I believe that is a report which I asked him to make.

Q. Have you seen it? A. Briefly.

Q. Have you examined it recently? A. I have examined it briefly.

Q. How recently have you examined it? A. Yesterday evening.

Q. And that in your judgment is the report and the only report he made concerning competitive conditions from March, 1905, to May, 1905? A. Not the only report.

7288 *Dale Bumstead—(In Sur-Rebuttal)—Redirect*

Q. Have you examined other reports he made during that period? A. I have not.

Q. Then do you say that there are no other such reports? A. I do not say that there are no other reports, because I am convinced that there must have been many other such reports during that period.

Q. Did you request him to make other such reports during this same period? A. I don't know.

7289 Q. Do you know whether this is the complete report? A. I do not.

Q. You do not know whether parts of it may have been detached? A. I do not.

Q. You stated, I believe, that you had no conversation with Mr. Brewster with reference to the result of this report, concerning competitive conditions, which he turned in about May 1st, 1905? A. I don't think I made that statement.

7290 Q. Then I will ask you, did you have any conversation with him concerning a report which he made about May 1st, 1905? A. I recall no conversation with him.

Redirect examination by Mr. Button:

Q. You were quoted some of your testimony in the Government case as to what territory a 95 per cent price prevailed in, which seems to be found at page 154 of the record in recross examination. Now, I ask you if you did not testify as follows in regard to the 95 cent price on your direct examination, as you recollect? "How low has the price of black powder gotten in your district since you have been there? I mean how low has the price which your company has charged gotten? A. Ninety-five cents per keg in carload lots of eight hundred kegs or more. Q. Who was the most responsible for getting the price

Jonathan Haskell—(In Sur-Rebuttal)—Direct— 7291

down to that point? A. I think the honors were divided. Q. Between whom? A. Between the American Powder Company, the Buckeye Powder Company, the Miami Powder Company, the United States Powder Company, and others." Is that what you said in regard to the 95 cents price? A. It is.

Q. Then you were asked on your cross examination: "Q. What territory did the price of ninety-five cents prevail in"— That was read to you by Mr. Abbott. Did you refer at that time to any general ninety-five cent price? A. I did not. I referred to the 95 cent prices that had been quoted. 7292

Motion to strike out denied.)

Q. When did you first go to Chicago and take charge? A. I first went to Chicago and took charge in the latter part of 1906.

Mr. Button: That is all.

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JONATHAN HASKELL, recalled in sur-rebuttal by the defendants:

Direct examination by Mr. Button:

Q. Mr. Haskell, in May, 1905, were you head of the sales department of the du Pont Powder Company? A. Yes.

Q. At that time was there a clerk in the office at Wilmington by the name of David S. Brewster? A. Yes.

Q. In your department? A. Yes, sir.

Q. At that time was any telegram sent from that office to the Chicago office or the St. Louis office authorizing a general 95 cent price in some of the Western States? A. There was not.

7294 *Jonathan Haskell—(In Sur-Rebuttal)—Cross*

Cross examination by Mr. Abbott:

Q. Might not a telegram have been sent by some other person in connection with the Powder Company and not yourself? A. The invariable practice at that time was for the assistant director of sales to send to the branch offices information regarding prices.

Q. And he would be the only person authorized to do that? A. The only person.

7295 Q. And who was he? A. Mr. Bumstead was in charge of the Illinois and Indiana territory at that time.

Mr. Abbott: That is all.

Thereafter a statement of average monthly prices of nitrate of soda was received in evidence, under stipulation of counsel, as Plaintiff's Exhibit 1429.

7296 Thereafter a document produced by the defendants as a report of David S. Brewster, was received in evidence, under stipulation of counsel, as Plaintiff's Exhibit 1437.

Thereafter certain documents, being summaries from the books of the Buckeye Powder Company were received in evidence, by stipulation of counsel, and marked as the Plaintiff's Exhibits 1432, 1433, 1434, 1435, 1436.

Thereafter certain maps offered by the defendants were received in evidence, under stipulation of counsel, as Defendants' Exhibits to inclusive.

Thereupon plaintiff rested.

Thereupon defendants rested.

Stipulation

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Thereupon the defendants moved the Court to direct the jury to return a verdict for each of the defendants, which motion was denied as to the defendant the E. I. du Pont de Nemours Powder Company, but was reserved as to the defendants Eastern Dynamite Company and International Smokeless Powder and Chemical Company.

Thereafter the respective counsel addressed the jury.

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Thereafter, upon the conclusion of the opening statement to the jury by plaintiff's counsel the defendants' counsel moved the Court to require the plaintiff to make an election as to whether the plaintiff under his declaration would rely upon the first or the second section of the Act of Congress of July 2nd, 1890, commonly known as the Sherman Act, in seeking a recovery, and after argument said motion was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed.

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Thereupon plaintiff elected to rely upon acts declared to be unlawful by Section 2 of said Act.

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Court's Charge

February 24, 1914.

And, thereafter, counsel for all the parties having concluded their addresses to the jury, the Court instructed the jury as follows:

CHARGE OF THE COURT.

Gentlemen:

7301 Before I address myself to the jurors, I desire to say to counsel on both sides that I appreciate their courtesy and their forbearance during this long trial.

And now, gentlemen of the jury, to you also I desire to express my appreciation of your faithful attention to this case, although it has been an unusually long time in trying. I find it necessary to give considerable attention to some branches of the case, but I have not had the time to compress it as much as I should like; so that I bespeak your patience during the additional time that must be
7302 spent in stating the law of the case, and in any endeavor to help you to apply the law to the testimony.

Counsel were purposely given unlimited time to discuss the testimony and to lay before you their contentions as to what facts have been proven, their relationship and significance. This has been done, partly, that nothing in the voluminous testimony that has been given and the relationship of the large number of documents and exhibits introduced which counsel considered as important, should be overlooked, and also to relieve the Court from going extensively into the matter of the disputed questions of fact. In so doing a number of days have been occupied by counsel and I am glad I can say

Court's Charge

7303

truthfully that their labors have been very helpful to us all and that they have relieved me of much work in dealing with the testimony. Nevertheless, as I have said, it will be necessary for me to deal considerably with some branches of the testimony to be helpful to you when you take this case under final deliberation, and I desire therefore at the outset to define the difference in our functions, and so say to you that in our system of jurisprudence the Court finds and states the law and the jury finds the facts. You will take the law as the Court states it, regardless of any personal views that you may have as to what it should be. If the Court errs in its statement of the law, the party aggrieved thereby has his remedy by taking appropriate exceptions and obtaining a review founded thereon by resorting to the higher courts, and there is nothing in the conduct of the case by counsel that suggests that there will be any dearth of exceptions if any of them consider that the court has erroneously stated the law. If, however, you should attempt to follow a different conception of the law, there is no remedy for the aggrieved party, as there would be no way of determining that you did so or what you did.

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In the realm of disputed facts, however, you are the sole judges and it will be your duty to apply the law as the Court states it to the facts as you find them.

You are also the sole judges of the credibility of the witnesses and the weight that is to be given their testimony. The Court, in dealing with the testimony, will not attempt to quote the language of the witnesses, but will endeavor to give the substance and effect of it, and if the Court in so dealing with it should fail to give it the proper effect or should assume some things as admitted or not

7306

Court's Charge

disputed, or if some of the witnesses should have impressed the Court more than they have you, or if the Court gives some fact or group of facts a greater significance than you think they deserve, or if the Court should omit reference to some fact or group of facts which to your mind have significance as indicating where the truth is, you are not to be constrained to follow the views of the Court in such matters or any other views that you may think it has in the premises, but it will be your duty to give the witnesses such credence and their testimony such weight, and the facts found by you such effect, as you, in the exercise of your conscientious judgment think they deserve.

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The plaintiff in this suit bases its action upon the 7th Section of the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," which was approved July 2, 1890, and is popularly known as the "Sherman Anti-Trust Act," and this section reads as follows:

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"Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The pertinent phrases here are "things forbidden" by the Act, and "injured in his business or property sustained by reason thereof."

The forbidden or unlawful things referred to in

this Section are found in Sections 1 and 2 of the act and which sections, so far as they are pertinent here, read as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor."

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As construed by the United States Supreme Court the first section denounces the undue limiting of trade and the second section denounces the undue increasing of trade.

The unlawful thing of the first section—the undue restraint of trade—can not be done by one person, as the method or means which falls within its denunciation is contract, combination or conspiracy, and which of necessity require two or more persons.

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The unlawful act of the second section—to "monopolize or attempt to monopolize" may be done by one person alone and by other means than contract, combination or conspiracy, though it may also be done by two or more persons, and by means of contracts, combinations or conspiracies.

While these sections, considered separately, proceed on different lines, they have one common ultimate purpose, namely, the protection of the free flow of commerce, and this purpose must be well kept in mind during the entire consideration of the

case. This protection is obtained by the first section forbidding the undue restriction or limitation of trade by two or more acting in concert, and by the second section forbidding the undue increasing of the trade in the hands of one, or a few persons acting in unison.

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The plaintiff's grievance is, that the defendant has violated the second section of the Anti-Trust Act and which, as already noted, makes the monopolizing "or attempt to monopolize" any part of the trade among the several States unlawful; and, that in consequence thereof it has been injured in both its business and its property. The suppression of competition is the dominant idea of the monopoly sought to be prevented by this act and where this condition results there is monopoly, no matter what steps were used to bring it about. Such unlawful monopoly, however, is not the only thing sought to be prevented by this section. To attempt to monopolize is also embraced in its legislative purpose, and an attempt to monopolize includes any means purposely adopted for and manifestly adapted to the accomplishment of such a monopoly.

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As this second section, however, is but supplementary to the first section, and to make certain that the purpose of the first section be not evaded, but fully carried out, it follows that it is not every step which makes for monopoly that is within the prohibition of this section. It is only when the purpose of such step or its necessary effect is to stifle or to directly and substantially restrict competition that such step is an attempt to monopolize within such section.

Mere size or dominancy, or both together, do not constitute the monopoly here sought to be prevented. If either or both are the result of honest enterprise and normal methods of business develop-

ment, the law is not violated; but if such dominance is the result of unfair methods, that is, suppressing competition, or of the attempt to suppress competition, the statute is violated. An illustration of a monopoly that would not be within the legislative purpose of the Anti-Trust Act is afforded by a reference to the remote past history of the du Pont powder enterprise. The du Ponts began making and selling powder in 1802 and for a long time, until 1820, they had no competition. During all this time they had a monopoly of the powder business in this country. This monopoly came to them legitimately because they were the pioneers in that business and during such period no one competed with them.

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In order to maintain this suit, the plaintiff must prove by a preponderance of the evidence that the defendant has been guilty of an attempt to monopolize, within the prohibition of the Anti-Trust Act, and also that in or by such attempt the plaintiff was actually injured in its business or property.

Damages can not be assumed. They, as well as unlawful attempts to monopolize, must be proved; proved by a preponderance of evidence both as to the cause and amount.

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Furthermore, the plaintiff must prove the charge it has laid against the defendant in the declaration substantially as there laid, and to this charge I now turn. Before doing so, however, let me emphasize that the declaration is not evidence of any of the matters therein alleged. That constitutes but the plaintiff's accusations. I especially refer to this and give you this instruction because the charges therein contained are so voluminous, and they have been read and analyzed so frequently during the arguments of counsel, that at times it has been difficult to say what are allegations and

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Court's Charge

what is evidence, and as I, in my endeavor to help you in considering the charges therein made, am compelled to analyze or give the substance of them, I desire to say, at the outset that the charges are not evidence, and that as I proceed I will so endeavor to differentiate between what are the accusations and what is evidence which is offered in support of such charges. The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you that you return a verdict of no cause of action in their favor.

7319

Generally and compactly stated, the declaration charges that the remaining defendant, the E. I. du Pont de Nemours Powder Company, with certain named persons (alleged to be co-conspirators) having obtained "a practically complete monopoly in interstate trade in powder and other explosives, * * *

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engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries," and that in carrying out its monopolistic purposes, it conspired to coerce the plaintiff to yield its independence as a competitor and join with the defendant on its terms, in the furtherance of such unlawful purpose, or to drive it out of such business, and that it eventually succeeded in accomplishing the latter, to the plaintiff's damage.

More particularly, the declaration charges, first, that a conspiracy to monopolize the powder trade existed previous to the year 1902; that before that year certain (unnamed) manufacturers and vendors of powder, by means of many agreements limiting the output of the parties thereto, apportioning

the trade among themselves, and arbitrarily fixing the prices of powder, measurably succeeded in establishing a more or less complete monopoly of said trade in their own hands and continued to be an unlawful combination for the purpose of restraining interstate trade and commerce; second, that in said year 1902, "with the intent and purpose of securing a more complete monopoly and a more effective control of the powder trade in the United States," the E. I. du Pont de Nemours Company, subsequently changed to the E. I. du Pont de Nemours & Company, was incorporated under the laws of the State of Delaware; that such Delaware company thereupon, in order to prevent interference with its plans to completely monopolize the powder trade in the United States, absorbed or acquired control of the plants and tangible properties, theretofore partially controlled by or co-operating with it to monopolize the said trade, and that of the corporations owning and operating the same; third, that on the 19th of May, 1903, in order "to make said control absolute," the E. I. du Pont de Nemours Powder Company, the present defendant, was organized under the laws of the State of New Jersey; that thereupon it acquired, by purchase from the Delaware Company, its property by which the defendant acquired absolute control of the property and business of sixty-four (64) named corporations which it caused to be dissolved, "and removed from the business of manufacturing and selling powder and other explosives," and that by such purchase the said defendant "became possessed of a controlling interest in the capital stock of eleven other named corporations, including the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company." and fourth, that, by reason of these matters, the defendant and

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Court's Charge

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a number of persons named as co-conspirators, "acting as co-conspirators with the defendant, succeeded in establishing within themselves, and have ever since maintained, a practically complete monopoly in interstate trade in powder and other explosives, amounting to about 95 per cent of said entire trade, and ever since have been and now are engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries, have suppressed competition and have fixed prices of powder and other explosives arbitrarily and unreasonably, and have driven independent competitors out of business, or have coerced them into a sale to or union with said unlawful combination in unreasonably restraining trade and commerce among the several States of the United States and with foreign countries."

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This is a substantial recital of what the plaintiff alleges is the conspiracy that was begun prior to and effectually carried forward by the incorporation of the du Pont companies of 1902 and 1903. Now, as to the evidence, at the outset let me say it is conceded that the defendant is engaged in the manufacture and sale of powder in interstate commerce.

The evidence shows that the du Ponts, whether in the form of co-partnerships or corporations, have been in the business of manufacturing and selling powder since the year 1802; that until 1899 such interests were held in co-partnership and thereafter as corporations; that the defendant was organized on May 19, 1903, and took over the du Pont business properties and interests, and has continued to carry on the du Pont powder business ever since.

The evidence also shows that as far back as 1872 different manufacturers and vendors of powder formed an association part of the purpose of which

was to apportion the powder business of the country among the members of such association and to fix the prices of such commodity.

The evidence also shows that at the time of the incorporation of the defendant a similar association, embracing even a larger number of manufacturers and vendors of powder, with similar objects, existed and was in operation, and that the du Pont interests were members of such associations during the different periods of their existence and that they participated in the management and in the fruits thereof. The evidence also shows that both the du Pont Company of 1902 and that of 1903, the latter being the present defendant, were members of the trade association last referred to, and that the defendant continued a member thereof until June 30, 1904, when such trade association was dissolved.

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The defendant concedes in this suit that such trade associations were unlawful combinations within the Anti-Trust Act, but it contends that the dissolution of the association on June 30, 1904, such unlawful combinations came to an end and that no such combination existed thereafter, and that from that time only lawful competitive conditions existed.

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Upon the part of the plaintiff it is contended that the mere dissolving of the trade association in 1904 does not control; that by reason of the trade associations that had existed before the incorporation of the defendant and the latter of which was carried down for a little more than a year thereafter, the defendant obtained an unlawful status and acquired a power in the powder trade to which it was not lawfully entitled; that having obtained and still possessing the fruits of the unlawful combination, it must be held to be but a mere continuance of the attempt to monopolize the powder trade be-

gan and carried forward by such associations regardless of the fact that such associations through the operation of which it secured this undue prominence in the trade had been dissolved.

5331 The evidence shows that after the incorporation of the defendant it acquired the entire stock of the Laflin & Rand Powder Company, which had been a member of the several trade associations referred to and which except for the restraints imposed by the said associations was independent of the du Pont interests, and that through the acquisition of the Laflin & Rand stock it also obtained the control of a number of other corporations in which it had theretofore held but a minority stockholding interest. With the purchase of the Laflin & Rand stocks the principal stockholders of the Laflin & Rand entered into a contract with the purchasers, which insured to the benefit of the defendant, that they would not for a period of twenty-five years engage in the business of manufacturing powder. Except for this purchase of the Laflin & Rand, it and the other corporations last referred to would have become, at 5332 and after the dissolution of such trade association, independent operators and competitors, but this independence was lost completely by such purchase of the Laflin & Rand stocks and as, in these matters, substance and not form is controlling, the effect of the purchase of such stocks in increasing the power of the defendant as a factor in the competitive field of the powder business was as great, if not greater, than if such stocks had not been purchased and such corporations had been allowed to continue their independent existence, and all of them, together with the defendant, had continued under the restraints and limitations imposed upon them by such trade association.

The evidence also shows that the defendants made

an arrangement through one Sullivan, with the American, Miami and Aetna Companies, known as the "Fay Companies," whereby a previous agreement between the defendant and the Fay Companies, making an allotment to them of certain trade, with penalties in case of over sales, which ended on June 30, 1904, the date of the dissolution of the last association, was continued for an additional period of nine months.

At this time and down to 1906 there existed an agreement made in 1897 between certain American manufacturers of powder—the du Pont interests being one of them—and certain foreign manufacturers of powder relative to the apportionment of the powder trade in the United States and some of the other world powers.

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The Sullivan-Fay agreement and this agreement with foreign manufacturers of powder directly and necessarily restrained trade and, like the trade association agreement, tended to and were in law attempts to monopolize the trade in powder.

It is true that Thomas C. du Pont and Pierre S. du Pont, two of the three principal promoters of the said 1902 and 1903 companies and whose connection with the du Pont powder business began in 1902, had no knowledge of the plan and methods of the trade association which existed at the time the 1902 company was formed and with which the other du Ponts had theretofore been connected, and that the knowledge they had concerning such plans and methods was that obtained by them between about the time of the organization of the Delaware Company and the dissolution of the Association on June 30, 1904.

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It is also true that these gentlemen, in 1906, dissolved such foreign agreement, paying a considerable sum of money to do so, and that they also in

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Court's Charge

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that year brought to an end the contract which had been made by the du Pont corporation of 1899 with the King Powder Company, through the King Mercantile Company, whereby the defendant took over the King Company's output for a period of years not then expired, and for the cancellation of which contract they paid the sum of \$100,000. These instances are cited by the defendant as evidence showing that these gentlemen took prompt steps to disentangle the defendant from these unlawful contracts because they were undoubtedly in restraint of trade. For such steps these men are, of course, to be commended, but the question of the legal status of the defendant as one attempting to monopolize the powder trade is not changed materially by the cancellation of these two agreements.

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By the taking over of all the physical assets which had been gathered in by the Delaware Corporation of 1902, and by the subsequent absorption of the Laffin & Rand corporation with its physical assets and through it the control of the other corporations already referred to and the acquisition of a large part of its trade in powder obtained under contracts with consumers while such trade association lasted, very much of the status of the defendant, fixed by the benefits derived through the old trade associations, still obtained and continued, notwithstanding the dissolution of the trade association on June 30, 1904.

True, with the dissolution of such association some of its members became independent manufacturers and therefore competitors, and while all the benefits obtained from the trade associations which the defendant and the Laffin & Rand interests enjoyed during the continuance of such associations did not inure to the defendant by its taking over of the Laffin & Rand interests, yet that influential

position which the du Pont interests always had during the continuance of each of these trade associations, and which it was entitled to regardless of its connection with such associations, was very much augmented after the dissolution of the last Association because of its absorption of the Laffin & Rand interests, and this was such a unifying of previously existing independent interests, as to make the status thus obtained as clearly if not as effectively an attempt toward monopolization, as existed when all of the members of this association, while maintaining independent legal existences, were tied together by contracts which were unquestionably undue restraints of trade making for a monopolization and which therefore constituted an attempt to monopolize.

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The defendant, therefore, at the time of the organization of the plaintiff company which took place and, during the entire time the plaintiff carried on its business, was acting in violation of the Anti-Trust Act as attempting to monopolize the trade in powder which subjected it to be dissolved as such by direct attack on the part of the United States Government.

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The fact that the status of the defendant was such, however, that under a direct attack by the Government it would be dissolved as an unlawful combination in restraint of trade and an attempt to monopolize, would not alone make it liable in an action for damages. Such a suit can be maintained only for injuries sustained by reason of such attempted monopolization, so that in a suit for damages the defendant is entitled to more defenses than would be available in a suit brought by the Government for dissolution, and the plaintiff in such a suit has more to prove than is necessary to obtain a decree in the Government suit. It becomes import-

ant, therefore, to inquire into the relationship which the defendant bore to the powder trade generally at the time when the plaintiff asserts its promotor first declared his intent to engage in the powder business and its subsequent relationship toward such trade generally, and to the plaintiff in particular, during the years 1903 to 1908, within which period the plaintiff claims it was being injured by reason of the acts of the defendant and which it alleges were unlawful and within the operation of the Anti-Trust Act, as attempts to monopolize the powder trade.

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The mere fact that the defendant owes much of its growth and power in the trade to unlawful acts of the past, and that it continued to enjoy the fruits of some of such unlawful acts, does not make it liable in damages in a suit of this character.

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This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified for about twenty years. His services, while in the employment of the du Pont interests, brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him where he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a com-

petitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant when it, the plaintiff was launched into the powder field, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof.

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The plaintiff asserts in its declaration that the defendant during the period from 1903 to 1908 did use methods which are forbidden by the Trust Act in its efforts to secure business, which for our purpose have been called the overt acts and to which we will now direct our attention.

The overt acts alleged, as they concern the plaintiff (and now) please note that I am not referring to the evidence, but the plaintiff's charges) divide themselves naturally into two classes, those which preceded and those which followed the beginning of the plaintiff's business.

First, as to those immediately preceding the in-

corporation of the plaintiff; these concern alleged attempts to frustrate the location of an advantageous site and to prevent the securing of the proper machinery for the manufacture of powder. The former relates, of course, to that period during which Waddell says he was seeking a site upon which to locate plaintiff's plant, and the charge in that behalf is that an attempt was made to prevent Waddell from carrying out the contemplated organization of the plaintiff and to prevent it from securing any or a favorable site for a plant, all with the purpose of retaining and perpetuating a monopoly in the powder business. The methods by which this purpose was to be accomplished are said to be the dissuading of Waddell from entering into the business, and failing in that the offering to join him in conducting such business upon condition that he would place defendant in control of the plaintiff's business and affairs, and failing in that, seeking to have plaintiff's plant located in a sparsely settled region where the market for black blasting powder had not reached any extensive development, and failing in that, to prevent him from securing a location by putting detectives upon his track as he journeyed about looking for a site, creating opposition through the inhabitants in the neighborhood of a proposed site and by bidding up the price of the property sought for such purpose without intending to make use of it itself, but to prevent the entrance of an independent competitor for the powder trade.

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As to the attempt to frustrate the plaintiff's securing of proper machinery, the plaintiff alleges (note I am still dealing with the plaintiff's charges) that the defendant, by threatening to refuse to purchase powder-making machinery of any of the manufacturers thereof who would not give the defendant and its associates the exclusive right to such

machinery, induced many of them to refuse to sell their machinery to the plaintiff, and that plaintiff was compelled to deal with other manufacturers and to pay a higher price for its machinery than was usual and customary and largely in excess of the cost of like machinery to the defendant and its associates.

Now, as to the evidence:

There is evidence in the case which shows several interviews between Mr. Waddell and Mr. T. C. du Pont following Mr. Waddell's offering his resignation and declaration of intent to go into the powder business, and also that detectives were employed by the defendant who shadowed Mr. Waddell for a short period.

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As to the forestalling plaintiff in securing powder-making machinery. The only evidence on this head is the deposition of Jacob E. Schoemel, agent of Pros-Brinkman Mfg. Co., which shows that that company had a contract with the Indiana Powder Company whereby such manufacturer of machinery agreed not to make machinery for any one but the Indiana Powder Company and one other manufacturer named and in consideration of which the Indiana Powder Company agreed to take \$5,000 worth in repairs to or new construction of machinery a year for a period of five years, or to pay such manufacturer twenty per cent., as profit, for any part of said \$5,000 worth of work a year which they should not take. At the time this contract was made, June 3, 1902, as well as when Waddell first sought to obtain machinery for his plant, the Indiana Powder Company was owned by the defendant.

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There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of

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forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to embark in a competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor, which letter is the explanation offered on behalf of the defendants. As to such contract restraining the making of machinery, there were other manufacturers of powder machinery at this time, and while the fact of this contract does not sustain the plaintiff's allegation that many of such manufacturers of machinery were induced by the threats of the defendant not to purchase such machinery from any of such manufacturers who would not give it and its associates the exclusive right to such machinery, and while at the time of the making of this contract the Buckeye Powder Company was not yet in existence and the likelihood of its becoming a competitor was not known and therefore the making of such a contract can not be said to have been conceived with the view of specifically forestalling the plaintiff in securing such class of

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machinery, yet the existence of such a contract is to be considered by you on the general attitude of the defendant toward prospective competitors on the question whether it was a part of a general purpose of monopolizing the trade, that is, the suppression of competition. As to the negotiations that took place between Mr. Waddell and Mr. T. C. du Pont preceding Mr. Waddell's leaving the employ of the defendant; you have the testimony of both of those gentlemen, also the copies of the several proposed agreements relating to the defendant's joining Mr. Waddell in his contemplated entry into the manufacture of powder, and it is for you to say, in the light of all the circumstances surrounding such negotiations, whether they show a purpose to prevent Mr. Waddell entering into the business as a competitor, or a desire on the part of the defendant to protect its legitimate interest while at the same time helping one of their old employes to become a manufacturer and vendor of powder.

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As to the overt acts succeeding the advent of the plaintiff as competitor (I now again turn to the plaintiff's charges); one is that the defendant and their co-conspirators, to prevent fair and open competition, and with intent to coerce plaintiff into a combination with them, "or to drive it out of business and thereby stifle competition in said district (called the central) entered into a conspiracy with each other whereby all the co-conspirators," except the defendant, agreed to retire as competitors for the trade of said district, thus leaving the defendant "a clear field to carry on a war of extermination against plaintiff and drive it out of business"; that said conspirators arranged to proportionately pay the defendant all losses which it might sustain in carrying on such war; that thereupon the defen-

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dant appointed what is called the "Peoria Committee" to conduct such fight against plaintiff, and, in order to make such fight affective, all the other defendants, pursuant to said arrangement, withdrew their agencies from the City of Peoria and ceased to seek any of the trade in said district, taking in lieu thereof allotments of trade elsewhere to compensate them for the trade thus yielded, and that thereupon the defendant engaged in a determined and "disastrous warfare against the plaintiff to destroy its business and prevent it from acquiring any new business and to drive it out of business entirely, as more particularly hereinafter set forth."

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(Note that I have been again quoting from the declaration, in substance.)

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While there is evidence that on May 27, 1903, there was, as part of the Advisory Committee of the Trade Association then in existence, a committee known as the Peoria Committee, there is nothing in the record that would justify the conclusion that such committee was either organized for or authorized to conduct a fight against the plaintiff. It does appear in the minutes of advisory committee of the date mentioned that interested parties were advised that they might discontinue the present agency agreements as far as they might apply to the former customers of their agents at Peoria; but that, it will be observed, relates to the discontinuing of certain arrangements relating to agencies, and not to any action by the committee. It will also be noted that according to this allegation about the withdrawal of agencies from Peoria that while it charges that the defendant and its co-conspirators entered into this conspiracy, it only charges that "the other defendants withdrew" from the competition, and also that the particulars of

such warfare were left to subsequent allegations. The evidence does not show that the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the other defendants at the time the declaration was drawn, had any agencies in Peoria. The testimony of Mr. Wardell is that the powder manufacturers who had agencies at Peoria about the time that the plaintiff began to get ready for the business of manufacturing and vending powder were the defendant, the Phoenix, Hazard, King, Laffin & Rand, and American companies, and that all of the agencies in Peoria were withdrawn at such time except the du Pont. In the testimony of Mr. Moffat who also gave a list of the agencies at Peoria about this time, the Equitable Company is mentioned as having an agency there, it being in charge of Dooley Brothers, who, as stated by Mr. Waddell, were the agents of the Phoenix Company. There is no evidence that I recall of the withdrawal of the Equitable Company. Of these, the Phoenix, King, American, and Equitable companies are not named as co-conspirators and the Hazard and Laffin & Rand companies, as well as the Phoenix, were then owned by the defendant. The evidence on behalf of the defendant also tends to show, as to such of the alleged co-conspirators as were owned by it, namely, the Phoenix, Hazard and Laffin & Rand companies, that the withdrawing of their respective agencies and consolidating them with defendants was for the purpose of economizing the cost of handling the business of that district and was a mere administrative policy. On this matter of the consolidating of these agencies we have the alternative questions to consider, that is, the one raised by the plaintiff that it was a step in the conspiracy directed against it and intended to pre-

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vent it from obtaining such an entrance into that field as it was by law entitled to, and which it would have secured if the competitive conditions in that district were normal; and the other, raised by the defendant, whether the withdrawing of the individual agencies and consolidating them with that of defendant was solely for the purpose of economizing the cost of handling the defendant's trade for that district, and therefore lawful, because a competitor has a right to protect his own interests by such methods. In determining these questions you will consider the evidence that I have just referred to in the light of the circumstances surrounding such consolidation of agency, and any evidence as may bear upon them.

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As to that part of the charge now being considered, namely, that the co-conspirators agreed with the defendant to reimburse it for any losses that it might incur while carrying on this alleged trade war against the plaintiff, it is my duty to say to you that there is no evidence whatever in this case that would justify such a finding.

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Of course, as to the Hazard and Latfin & Rand Companies, which at this time yet maintained their separate legal existence though their stocks were owned by the defendant, whatever losses would be sustained by the defendant (if any), as the result of the alleged fight for commercial supremacy in the Peoria district, would in a sense be made up by the Hazard and Latfin & Rand if these by reason of their withdrawal from this district were enabled to make a profit in other districts. The alleged methods taken by the defendant in carrying out this alleged warfare will now be considered. (Please note I am again referring to the charge and not the evidence). The plaintiff charges that as a part of such methods the defendant, to prevent and suppress competition, organized and maintained a

bureau of information and through it instituted a system of espionage upon the business and private affairs of persons engaged in legitimate occupations, whereby it obtained a collection of rumors and information of every kind concerning the trade in powder and the various consumers and manufacturers thereof which was tabulated in three divisions, one designated as the "White Division," containing the names of consumers and manufacturers loyal to the defendant, one designated as the "Yellow Division," containing the names of those who were friendly but non-trustworthy and who would need watching, and the third, called the "Red Division," containing the names of independent manufacturers and consumers classified as enemies of the defendant's monopoly; that defendant's agents were required to seize every opportunity to annoy, embarrass and injure such independents in their business, stir up strife between employers and employees, encourage litigation, create false and malicious rumors concerning their solvency, and generally to do what would discredit and embarrass them; that it was the practice of such bureau to spread broadcast certain of the information and rumors thus collected where they would do the greatest damage to such independents, "in order to force them to ally themselves with said defendant and co-operate with it in obtaining its monopolistic control of the powder trade or drive them out of business entirely;" that plaintiff and its customers were classified in such red division, and that the bureau employed agents "to prevent it from acquiring any portion of the powder trade and to prevent consumers of black blasting powder from purchasing the same from it and to induce its customers to abandon it, and to injure and destroy its credit, by creating distrust

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among its creditors by circulating false and malicious rumors regarding its solvency, and by circulating false and malicious statements concerning the quality" of its powder, and by stirring up discontent among the miners and strife between miners and operators to induce miners to refuse plaintiff's powder, intending to secure such business; that influential miners were employed to influence the workmen by boycott of plaintiff's powder; that cash, intoxicating liquors, household goods and clothing were distributed among such miners to secure their influence with their fellow workmen to effect such boycotts; that in consequence of such conduct certain consignments of plaintiff's powder were rejected and further purchases discontinued; that the defendant sent spies into the plaintiff's mills to learn its secrets and to tamper with its processes; that it employed agents of railroads to give defendant names and addresses of plaintiff's consignees, and thereafter induced them to reject consignments made to them by offering to furnish them powder below any price that the plaintiff might offer, and below the actual cost of the powder if necessary to secure their trade.

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Other steps or methods taken by the defendant, alleged by the plaintiff to be part of its plan to monopolize the powder trade and to ruin plaintiff and drive it out of business (Please note I am still dealing with plaintiff's charges, and not evidence) were the inducing of consumers to give it, the defendant, their exclusive trade in black blasting powder, thereby taking them out of the market, and this it is said was done, first, by contracts for a period of from one to five years; second, by granting them secret rebates; and, third, by special cut prices far below a fair and living price, and below any profit whatsoever; and as to such contracts;

that they were secured, at different times, by promises of special privileges and priority in delivery, by threats to deprive customers of other grades of powder and explosives not made by plaintiff, by misrepresenting capacity of plaintiff's mills, by circulating false and damaging statements of accident at such mills, by false and malicious statements of the quality of plaintiff's powder, by offers of financial assistance to consumers, and by stirring up strife among the employees thereof.

Plaintiff also alleges that the terms of these contracts were made strictly confidential because defendants knew that they were contrary to the Anti-Trust Act; that such contracts also provided for secret rebates based upon annual purchases; that where a customer was under contract with the defendant when plaintiff began business, defendant, in order to take the consumer out of free competition, voluntarily increased the rebates named in such contracts, such rebates to go into effect immediately, upon the consideration that such contract would be continued at its expiration for another period of years; that the amount of the rebate and the increase of it were not regulated by any law of supply and demand, but were determined solely by the purpose to secure all of the customer's trade and withdraw him from the open market until the plaintiff had been coerced into submission or forced to retire from business.

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As to cut prices (and I am still dealing with plaintiff's charges, and not the evidence); that such were issued for the benefit of the consumers where they could not be induced to enter into such contracts, and as such offer was kept open to them at all times they were permitted to take advantage of such cut prices at any time and defendant obtained the trade of such customers as effectively as

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if they had entered into such contracts; that defendant in some cases contracted to supply powder for less than its actual cost, and that it was enabled to do that because its losses would be made up by the other defendants and their co-conspirators; that defendant did not issue any regular or fixed price list, but that a Sales Board, composed of the defendant's Director of Sales and his assistants, from time to time fixed prices arbitrarily; that in those states or territories where defendants and their co-conspirators were in full control of the trade the prices always realized a substantial and sometimes excessive profit, but in those states or territories where they or some of them were competing for business prices were determined solely to prevent all manufacturers, not parties to the conspiracy, from obtaining any or a fair proportion of the trade, and not with the purpose of obtaining business for itself at a fair profit, in order that the defendants and their co-conspirators might fix any price they should thereafter see fit without regard to the consumer's interests; that plaintiff was forced for more than five years to meet prices so fixed by the defendant in endeavoring to obtain and retain enough business to keep its mills operating and to obtain its fair share of the trade in such states and territories, but that it was unable to do so; that plaintiff was unable to make any offer to supply powder at a price below which defendant would not go, and that where the consumer's business was submitted to competitive bidding defendant would persistently reduce its price so as to underbid plaintiff and deprive it of such business, sometimes making sales at an actual loss; that ultimately plaintiff was compelled through such means to surrender the business of such consumer; that by reason of such practices plaintiff suffered irre-

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parable loss, not only of the fair profits which would have come to it from such contracts which it was thus prevented from securing, but of the opportunity of keeping its mills in continuous operation, and that because of such policy and practices in most cases the defendant ultimately succeeded in inducing the purchasers of black blasting powder to enter into such contracts, thereby gradually removing the danger of competition in said states and territories by absorbing more than 95 per cent of the powder trade.

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Now as to the evidence:

The evidence shows that defendant had a bureau of information within its sales department, whereby it kept in touch with the trade and which regulated the prices at which its powder might be sold. This bureau was composed of the heads of the different divisions of the sales department and to which trade reports were sent from the defendant's agencies throughout the country. Such a bureau of information in itself is not unlawful and whether it is a step in the alleged conspiracy here depends upon whether the use made of it was unlawful. If its purpose was merely to acquaint the defendant with the condition of the trade from time to time, and no other use was made of it than the protecting and furthering of its legitimate interests, and it was not used with the purpose of harrassing or oppressing its competitors or to obstruct the free flow of commerce in the powder business, it was lawful. If, however, its use went beyond this and such bureau was made the means of interfering with or obstructing the free flow of commerce in powder, with the view of unduly increasing its trade, then it would be unlawful and a step in the effort to monopolize the trade. To determine what was the purpose and the use made of this bureau of infor-

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mation, the evidence as to the methods employed and the use made thereof has to be considered by you. A given method or act or series of acts may be perfectly innocent in itself and yet may be used as an instrumentality of carrying out an unlawful purpose. Do the facts bearing upon this question convince you that they were used as alleged by the plaintiff?

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There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff that the defendant spread broadcast any of the information of facts or rumors which it obtained through the trade reports of its agents in such places or among the trade where it would result to the damage of any of its competitors, or that the defendant sought to destroy or injure the plaintiff's credit, or that it did anything to create distrust among the plaintiff's creditors, or that it circulated or fathered false rumors of the plaintiff's solvency or that of any of the other competitors, or that it tampered with the plaintiff's processes of manufacture, or that it misrepresented the capacity of plaintiff's mills, or that it circulated false and damaging statements of accidents that occurred at the plaintiff's mills, or that it circulated false and malicious statements concerning the quality of plaintiff's powder, or that cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, or that it employed persons to enter plaintiff's mills to ascertain its business secrets, or that it made offers of financial assistance to consumers of powder to secure their orders or business, or that it sold its product below actual cost, or that there was any arrangement between defendant and the Eastern Dynamite Company and the International Smokeless Powder and Chemical

Company or any of the alleged co-conspirators whereby they would reimburse the defendant for the losses sustained by it in selling its powder below cost, and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried.

Of course, as the defendant had a controlling interest in the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, it would follow that if these two companies carried on a profitable business the defendant would be benefitted by such profits to the extent of its stockholders in such companies, and such profits would help to make up any loss that it might sustain if it sold its powder below cost.

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Furthermore, the evidence negatives the plaintiff's contention that as a result of the alleged overt acts the defendant succeeded in absorbing more than 95 per cent of the powder trade. The fact is that the defendant's percentage of both its capacity of production and the trade actually supplied by it was less at the time the plaintiff sold its plant than when the latter began to do business, and that the percentages of both sales and capacity of production of the other manufacturers correspondingly increased during said period.

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There is testimony in the case which shows that there was opposition among the mine operatives to the introduction or use of the plaintiff's powder, and that as a result the Buckeye powder was not used in some instances and the use discontinued in other instances and that tests were made of the efficiency of both the Buckeye and defendant's powders. The character of these tests has been testified to, as well as the methods of making the tests, and

the result thereof. That some strife existed among the miners of certain mines, or between them and the operators, seems to be borne out by the testimony, but the question here is whether that was due to improper activities chargeable to the defendant.

Under the contracts subsisting between the operators and the miners, the latter had the final say as to what powder should be used. This resulted in many instances in considerable contention between the mine operators and the miners, and sometimes between the miners themselves.

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The evidence shows that any grivance that arose in certain mines was considered by a pit committee, so-called, representing the miners, and with which committee the operators conferred in the matter of such disputes.

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One of the instances relied upon by the plaintiff as proof that certain improper influence was exerted against the plaintiff's powder is what has been frequently called in this case the "Thrush Incident," and which occurred at the Hanna City mines of Applegate & Lewis. That is in Illinois. At this mine there was considerable contention and strife over the use of both the plaintiff's and defendant's powders. Before the advent of the plaintiff the du Pont powder had been used for a number of years at these mines, but for a few months preceding the contest here referred to the Buckeye powder had been in use more or less. It was to the interest of the owners of the mines, if the plaintiff's powder was as satisfactory as the defendant's, to use the plaintiff's powder, as the mines were within four miles of the plaintiff's mill and they would not be required to purchase as many kegs at a time as was required in handling the defendant's powder. Mr. Lewis, one of the owners of such mines, and their superintendent, Mr. Robert Morton, testified that

they had had good results with the plaintiff's powder. As per their testimony, they had less screenings in the use of such powder than theretofore, and as it was to the pecuniary advantage of the operators to have as little screenings as possible, that result induced them to adopt plaintiff's powder. For a time both the plaintiff's and defendant's powders were used, each having its particular advocates among the miners. The contest among the miners over these powders reached such a stage, however, that the owners had considerable difficulty in their purpose of having the plaintiff's powder used at their mines, a number of the miners protesting against its use. This resulted in a test being ordered by the miners' union. While this test was going on each of the powders had a paid representative among the working miners, one acting in the interest of the plaintiff's powder and the other in the interest of the defendant's. Alec Thrush, representing the plaintiff's powder, received \$1.00 a day for a period of time. The period is in dispute between Mr. Thrush and Mr. Waddell. William J. Thrush, a relative of Alec Thrush (I understand he was a relative, although he may have been a distant one), working in the interest of the du Pont powder, received five cents for each keg of such powder that was used there. Both of these Thrushes were members of the Pit Committee and therefore in an influential position. Robert Morton, the superintendent, testified to the character of the test which proceeded for some days, and his evidence tends to show that the test was not fairly conducted on the part of the representatives of the du Pont interests, they aiding the effects produced by the defendant's powder by undercutting the coal in the solid. The result was that the test was discontinued on the order of Mr. Morton and the owners

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abandoned their attempt to keep the plaintiff's powder in their mines and the du Pont powder took its place.

Another instance of alleged improper influencing of miners against the plaintiff's powder is that which is said to have taken place at the Great Northern Fuel Company's mines, at Novinger, Missouri, in 1905. This case is better known to us as "the Spicer incident." At that time the plaintiff was supplying such mines with its powder under a contract which it had with the owners thereof.

Mr. Spicer was a salesman for the du Pont interests and he is charged with having fomented opposition among the miners against the Buckeye powder by falsely charging that it was a non-union powder.

William S. McCall, president of the Great Northern Fuel Company, testified that previous to the Spring of 1905 he had used the powders of the Excelsior, du Pont, Austin and Buckeye companies, and that he first began to use Buckeye powder in 1905, preceding which he had used du Pont and Austin powders in the order named; that he obtained a more favorable price from the Buckeye Company and made a contract with it; that he stopped using Buckeye powder about the middle of October of that year; that the miners refused to use anything but du Pont, but that the principal cause was that he wanted cheaper powder and that he got du Pont ten cents a keg cheaper; that he had learned that Rombauer, a competitor in that same field, was getting his powder cheaper, and that plaintiff failing to respond to his overtures for lower prices, he took up the matter with Mr. Spicer, in Kansas City, and told him that if he knew of any way by which he could get the miners to ask for du Pont powder he would sign a contract with

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him at the ten cents lesser rate; that Spicer said that he would go to Novinger and see what could be done; that he said to Mr. Spicer that he understood that Buckeye was union and du Pont non-union powder; that Mr. Spicer said that could be easily fixed; that shortly thereafter he got a letter from the secretary of the miners' local union, and that a strike resulted; that some time thereafter he signed up with Mr. Spicer at St. Louis for du Pont powder; that he said to Spicer that he had done a good job in getting them away from that contract and saving them ten cents a keg. The contract thus entered into was dated November 1, 1905, and shows that the Great Northern Fuel Company was to purchase all the black blasting powder to be used at its mines in the Novinger district for one year, and that the price in carload lots of 800 kegs was \$1.45 per keg, subject to a rebate of 40 cents a keg. 7400

Two contracts with similar terms to the one mentioned were subsequently entered into, the first bearing date of November 5th, 1906, and the second November 5th, 1907, thus consecutively covering a period of three years. 7401

Samuel W. Stephens, a mine foreman at the Great Northern Fuel Company's mines, and Joseph F. Rutherford, a miner at such mines, and secretary of the miners' local union, testified that this Mr. Spicer and one Mr. Phillips, an official of the miners' union, came to the mines and told them that Buckeye was non-union powder and that du Pont was union.

John Kelly, a mine foreman at the same mines, testified that some man came to the mines and said that he represented union powder and that Buckeye was non-union. As a result such charge opposition arose against plaintiff's powder which

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resulted in a strike and which continued until the owners of the mines substituted du Pont powder for that of the plaintiff.

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Mr. Spicer, in his deposition, when he was called by the plaintiff, in answer to a question put to him on behalf of the plaintiff whether he had ever approached any one with reference to influencing miners to accept his powder and to make a demand for it upon the operators, said: "I cannot recall at the present time;" and upon being asked whether he would say that he did not, he said: "I think I will let the answer go as it stands." Subsequently, when he appeared in person before us as a witness for the defendant, he said he never employed any miners to use their influence to put du Pont powder into any mine; that at the time he discussed the matter with Mr. McCall about his taking du Pont powder, he was not aware that the Great Northern Fuel Company was under contract with the plaintiff; that he was not in Novinger at any time in 1905, and that he had never been there until February,

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1907; that he had not seen any of the men who testified that he had made the charge of non-union powder against the plaintiff's before the time they gave their testimony. He was present at the time they so testified, and he detailed the way by which he was identified by Stephens and Rutherford. He said that in the year 1905 the du Pont powder was boycotted at the Novinger mines because it was non-union; that subsequently, after having had some talk with Mr. McCall, he applied to the du Pont Company to obtain the authority to make a contract at \$1.10 and later signed a contract at \$1.05. The question of veracity is here raised between Mr. Spicer and Messrs. Stephens and Rutherford as to whether Spicer was the man whom they identified as the one who came to the mines and made the

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charge that Buckeye was a non-union powder. You remember the testimony as to how the identification was made by these men, and how much weight is to be given to identification made in such manner is for your determination. That some one came there and made such charge is the effect of the testimony of Messrs. Stephens, Rutherford and Kelly, and that the du Pont powder replaced that of the plaintiff as result of such strike is undisputed.

As to the two specific instances which I have just detailed, the Thrush and Spicer incidents; in the case of the Thrush incident it is apparent that the opposition to the Buckeye powder was being managed by one who was paid to represent the interests of the defendant's powder, and the question arising from this incident is whether the efforts here made to exclude the Buckeye powder firm the Applegate & Lewis mines were prompted solely by the purpose of protecting the trade which the defendant had had with such mines before plaintiff succeeded in securing such trade, or a portion of it, or whether such efforts were prompted and carried out with the purpose of oppressing these alternative questions there is involved also whether the methods employed in behalf of the defendant's powder were such as were justified in view of those employed by the plaintiff in its endeavor to retain the trade which it had secured in supplying such mines with its powder.

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As to the Spicer incident; the question there is whether Spicer, the agent of the defendant, was responsible for the false charge that plaintiff's powder was a non-union powder and for instigating the opposition of the miners to the plaintiff's powder based on such charge. If you find that he was not there is nothing in the incident that could be found as an attempt to monopolize. If you find that he

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did so instigate the opposition, resulting as it did in a strike, whether the motive for so doing had its origin in Mr. McCall's desire to be rid of his contract with the plaintiff or not, it was securing trade for his principal unfairly, and the next question for you to determine is whether it was done for the purpose of suppressing competition.

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As to the charge that the defendant employed railroad employees to make telegraphic reports or other kind of reports of the plaintiff's shipments, and which information was used to get consignees to reject plaintiff's shipments, there is no proof that the defendant was able to have the consignments of plaintiff's powder cancelled by reason of any information obtained from railroad employees concerning such consignments, or that they ever succeeded in getting such information from such employees, but there is evidence in the case that one named Piatt, who was an agent of the defendant, sought to hire Harry Paige, commercial agent of the C. B. & Q. Railway, to give him (Piatt) information concerning the shipments of the plaintiff's powder, offering to pay for such information at a named rate—\$5.00 a letter, as I recall it. This was pre-emptorily refused by such agent, and as I recall it it is the only proof of any attempt to secure such information. This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between the defendant's and plaintiff's powders in that district, indicate? The plaintiff was a newcomer in a field already occupied. Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some

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other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a particular competitor has been making inroads upon the established trade of another, such other may properly keep a surveillance over the conduct of such new competitor; but, while this is lawful, it may be readily noted that an unlawful use of such information may be made.

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As to the charge that the defendant refused to sell other explosives, such as dynamite, to consumers of black blasting powder unless such consumers also bought their black blasting powder of the defendant, there is but one instance in which proof has been offered in support of this allegation, as I recall the same, and that is the case of the firm of Bruce & Burdick. Robert C. Bruce, a member of such firm, testified that during 1903, 1904 and 1905, he was engaged, at Joliet, Illinois, in the stone, coal and powder business; that he was an agent as well as a purchaser, in 1903, of Buckeye powder and du Pont dynamite; that before that he had been using and handling Laflin & Rand powder; that subsequently, in 1904, in a conversation with Mr. Elliott S. Rice, the Chicago agent of the defendant, at the latter's office in Chicago, Mr. Rice said to him that unless he stopped buying Buckeye powder they would cancel his agency for their dynamite. This Mr. Rice denied, further saying that he did not know that Bruce & Burdick became customers of the Buckeye Company during

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1903 to 1908. This, of course, raises a question of veracity between the two witnesses, and if you should find that the Bruce version is the correct one, still there will be the question of whether it is part of a general plan and purpose to injure the plaintiff in its efforts to secure business, or whether it is merely to protect the interests of the defendant.

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The refusal of a manufacturer of several commodities to sell any of them to a customer unless he handle all, is not in itself illegal, nor, standing alone, evidence of that degree of unfair competition which comes within the antitrust act; however, neither this fact, nor any other single instance, is necessarily to be treated as standing alone, but may, if the testimony in the case warrants it, be considered in connection with other acts for the purpose of determining whether it was a mere isolated, disconnected instance, or a part of a general scheme and purpose to harass and oppress a competitor.

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Now, as to the alleged contract system of the defendant to tie up the trade, etc. There is evidence that the defendant and its predecessors employed contracts as one of the means of securing trade. There is nothing in the form of contract used by the defendant that is a violation of the Anti-Trust Act, and such contracts considered separately are not violations of such act. Manifestly, a single contract, though it cover the demand of the largest consumer of powder, and by its necessary effect remove a large part of the trade from the open market, would not be stamped as a monopolization, or, standing alone, afford any basis which would justify the inference that there was an intent to use it against a competitor; nor would the fact that here and there similar contracts were

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being made justify such an inference, but if such contracts were numerous or only used in territory where the competition was severe and to which the opposing competitors were restricted because of the freight rates which are such a large factor in limiting the area within which a particular manufacturer can successfully compete, and the purpose of that method was to tie up the trade so as to remove it in a large degree from the free and open competition, and the result of such methods was to remove large portions of such trade from open competition, then such contracts would be attempts to monopolize. There is a conflict between Mr. Waddell's testimony and that of witnesses on the part of the defendant as to when this means was first employed. It is clear, however, that such contracts were in general use some years before the incorporation of the defendant and the entrance of the plaintiff into the powder business. The making of long time contracts at special prices, that is, figures below the prevailing prices in particular districts, would be an effective means of tying up the particular trade thus contracted and of removing it from the open market while such general prices lasted and were being enforced. A good illustration of the effectiveness of contracts as restraints of trade is afforded by a part of the period when the trade associations was a controlling or influential factor in the powder trade. The inducement to a consumer to enter into such a contract, as well as the effectiveness of such a contract in a commercial sense, so far as the manufacturer is concerned, however, would depend upon how stable such so-called prevailing price then was and how firmly it was then thought it would be maintained during the period of the contract. With a trade association composed of a

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sufficient number of manufacturers to maintain a general price such contracts would be more likely to receive favorable consideration by large consumers than if there were no trade association or only a weaker one. If competition was not restrained by such trade association, but was free and uncontrolled by any but the normal laws of trade,, the inducement to enter into such contracts, namely, the feeling of certainty that a price higher than that which was to be made in the contract was likely to be maintained, would not be so strong, and normally a less number of contracts would be made throughout the trade generally than if artificial means, such as grow out of trade associations, were exerting a controlling effect upon the general prices of a particular commodity.

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In the report made by Mr. Waddell to Mr. Pierre S. du Pont, dated October 22,, 1902, while Mr. Waddell was still in the employ of the defendant, he, in dealing with the volume of the defendant's sales by contract, showed that about one-half of the defendant's output was through contracts and further, that by June 30th, 1903, contracts representing about one-third of such output would expire.

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The du Pont interests, before the incorporation of the present defendant, as well as the other members of the old trade associations, had a number of such contracts many of which had not expired upon the organization of the defendant and which devolved upon the defendant as well as many other assets and obligations of the old du Pont interests. While the association lasted, which, as you remember, continued down to June 30th, 1904, such contracts were a part of the instrumentalities in restraint of trade, and unlawful, and if a large part of them were maintained thereafter they would continue to be unlawful notwithstanding the trade

association had been dissolved; and if such contracted trade, or a large part of it, could be kept for the benefit of the defendant by renewals of such contracts, or by rebates made to the consumer to induce him to keep giving his trade to it, such holding on to the trade would as effectually remove it from open competition as it did while the trade association lasted, and would be evidence of an attempt to monopolize the trade. How effectively such contracts, or the retaining of the trade once contracted as evidence of attempts to monopolize will depend, of course, upon their number and the volume of the business thus removed from any given market; but so far as the plaintiff is concerned, the effectiveness of such contracts as evidence of such attempt to monopolize depends upon how much of such contracted or retained trade was in the district in which its mill was located, and where, because of the freight rates, it was practically confined in securing a share of profitable business.

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The evidence also shows that the Hazard Company, which the defendant's predecessor then owned, and the Laflin & Rand Company, which the defendant subsequently acquired, as well as the defendant itself, were also authorized to make a number of such contracts and to grant the rebates to a number of other consumers in the Peoria and Springfield coal fields, and where the plaintiff would normally find its more profitable market by reason of its close proximity to consumption. The so-called Rice list of contracts, 98 in number, made in 1903 and 1904, shows that all but a very few of them, were made with consumers of black blasting powder in such coal fields.

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These contracts all inured to the benefit of the defendant, and through them it appears that a very

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large part of the trade in black blasting powder in such coal fields was removed from open competition just before and about the time that the plaintiff entered as a competitor in the powder trade. Most, if not all of them, that is, of the contracts, were renewals of older contracts, and the prices at which they were authorized to be renewed were for the purpose of retaining such trade. This fact, however, does not alter their status. It merely requires the scrutiny to be applied at an earlier period.

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The plaintiff had a right to enter into the powder business and to locate its mills where it pleased. The defendant, as a manufacturer of long standing, and of business reputation, also had the right to maintain its existence and secure trade by legitimate effort. At this time, however, it had obtained a large part of the trade by means which, considered in their entirety, necessarily and directly restrained large parts of the trade in those districts. The plaintiff contends that many of these contracts were entered upon and the privileges were extended to such consumers of powder as are shown by such

7428 Rice list of contracts for the very purpose of preventing competition from getting a foothold in that district and for which they were entitled to strive on a free footing with other manufacturers of powder. Do the facts sustain such contention? If they do the contracts would be unlawful under the Anti-Trust Act. If, however, in the light shed upon them by the circumstances constituting their environment these contracts did not amount to an attempt to monopolize the trade, it will be necessary for you to consider them in connection with the subsequent acts of the defendant that had relation to the trade found in those districts some of which have already been referred to.

As to rebates: It seems to have been the custom

of the defendant's predecessors and other manufacturers of powder during the existence of the Trade Association, and continued thereafter by the defendant, and even carried on by the plaintiff, to offer and allow rebates to consumers of powder, the rebate increasing as the consumption increased. There is a justifiable ground for giving a discount for prompt cash payment as against slow payment, and so would be the policy of giving one who consumes largely the benefit of a lower rate offset to the greater expense of handling smaller trade by the manufacturers; but as this increasing of rebates in proportion to the increased volume of purchases may be made the means of securing all or by much the greater part of a consumer's trade, as it is to the interest of such consumer to concentrate his purchases so as to get the larger rebate, such system must be studied, not by considering each contract separately, but in connection with other steps or methods employed in securing trade, if they have any relation to each other, because such a system may be made an effective means of removing large portions of trade from the open market. So that while contracts providing for rebates made with a number of such consumers spread over a number of States might not be unlawful, yet a concentrating of many in a given district may evidence an attempt to monopolize. This may be so even though the aggregate of the trade removed from the open market in such limited district is less in volume than that of the rebate contracts spread over a large territory. It is not the mere volume of the trade thus removed, therefore, that is controlling on this question, but it is the proportion of the amount consumed in a particular district that is removed by such system of rebates or contracts that is to be considered, for, as already noted, the freight

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rates are an important factor as to the area that a single plant can cover if the competition is keen. To such a manufacturer the removing of the trade from the open market in the districts so remote from him that normally they are beyond his reach, would have little effect, whereas the removal of a very large part of the trade in the district within which he is practically confined in his operations might prove disastrous.

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Now, inasmuch as a series of contracts granting rebates, even though found in a given territory, may or may not be evidence of attempts to monopolize, we are required here again to determine what was the purpose in employing that means. Was it merely the normal reaching out to secure such measure of the business as would normally belong to the defendant, if the market were kept free and open to all, or was it for the purpose of hemming in the competitors who must find the bulk of their trade in such restricted market, so as to make them dependent not upon the laws of trade that prevail when competitive conditions are free and open, but upon the will of the defendant through whose contracts such market was restricted.

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As to the alleged cut prices to remove the trade from regular competition: The defendant, having become possessed of the plants of other companies, was by reason of such purchases in a position to supply a larger demand of the powder trade than before. It had a right to take any usual method known in business conducted normally to preserve all of the trade which these different companies brought to it. It had a right to run its mills at any capacity it saw fit, even though the running of such mills at their fullest capacity would require it to find additional markets. It had a right to do all these things even though it knew that in so doing

keener competition for the trade would result. In competing for such trade, however, it was confined to the use of lawful methods of business. If by reason of its size or its superior facilities, it could manufacture its product cheaper than a competitor, it had the right to avail itself of such advantage, either by taking the extra profits that such advantage gave or to underbid its competitors with their own trade. It would have no right, however, to keep such of its trade as had been acquired by illegal means from being openly and fairly competed for. It would have no right to use its superior advantages, whether derived through a number of plants or old contracts, in an attempt to monopolize the trade; and it would not have the right under the guise of ordinary methods in business to designedly underbid a competitor, with the purpose of so crippling it as to force it out of business or to make it a negligible factor in opposing a purpose to monopolize. The crucial question of the defendant's conduct in this central district in which the plaintiff was located is, therefore, what was the defendant's purpose in using the methods to secure the trade in that district. Was it merely to protect its interests as a producer and vendor of powder or was it to inflict such injuries upon the Buckeye or other competitors in that district as to make it impossible for such competitors to cope with it there because of their lesser financial strength and more limited area in which they could do a profitable business; so that in the end, be it soon or long drawn out, they would have to yield their independence or withdraw their opposition as competitors and permit of the defendant's acquiring such a dominancy in the trade as to amount to monopoly.

From Exhibit 1219, which is the statement showing the yearly gross price obtained for black blast-

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ing powder in the sixteen different districts in which the defendant operated, it appears that in the Chicago district, which was the one in charge of Mr. Rice from whom we obtained what is called the Rice list of contracts, ninety-eight in number, and to which reference has heretofore been made, the average price for black blasting powder in 1903 was \$1.22, in 1904 \$1.15, in 1905 \$1.04, in 1906 and 1907 98 cents, and in 1908 \$1.08. This shows that in the Chicago district, of which the Peoria and Springfield coal fields were part, the prices gradually were reduced until and including 1907. The evidence also shows that in May, 1905, the defendant cut the price of powder in favor of certain consumers to 95 cents. The names of these, about eighty-seven in number, together with the dates of such cuts, appear in exhibit 1248. The plaintiff contends that this was a general price made, while the defendant contends that it was not a general price, but applicable only to particular consumers upon special application made in their behalf through its agents in charge of the particular field.

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David S. Brewster, a witness called by the plaintiff, testified that he, in 1904 and part of 1905, was employed by the defendant in its Wilmington office in the sales department, directly under Mr. Bumstead who was assistant sales director, and that Mr. Haskell was at the head of that department; that he kept the records of the competitive end of the business; that in the spring of 1905, at the request of Mr. Haskell, for the use of the executive board, as he called it, he made a report from his records as to the prices obtained by the defendant's competitors; that his records consisted of cards made up from several thousand trade reports sent in by the salesmen covering a number of states west of Pittsburgh, but not including the west coast; that

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the sales board acted upon requests for prices, and that he would get such parts of the minutes as related to his duties, and that in that way he would know what was going on so far as affected his department; that subsequently a telegram was sent to Chicago to Mr. Ed C. Rice or E. S. Rice (he wasn't sure which), the du Pont representative there as he named them, and to Mr. Vehmeyer, the Laflin & Rand representative, advising them that a 95 cent rate was authorized; that while he did not see the telegram before it was sent he did see it subsequently when he was in Chicago. He gave the names of the Excelsior of Kansas City, Senior near Cincinnati, Miami near Zenia, Ohio, Egyptian near Marion, Ill., Buckeye of Peoria, Austin near Cleveland, Equitable near Alton, Ill., and United States near Terre Haute, Ind., as defendant's competitors at that time, but that he knew of no prices made to any consumer in competition with the Equitable, Austin and Miami Companies; that at that time, as he remembered it, there was not much cutting; that the general prices were \$1.05, \$1.10 and \$1.15; that they made most any price necessary to get the business; that the documents from which he made up his report for Mr. Haskell indicated that the Buckeye Powder Company was getting a larger price than the du Ponts; that, as he remembered it, it was getting \$1.15 and \$1.20 a keg; that a 95 cent price was a general price in specific territories—he naming Illinois, Indiana, Wisconsin, North Dakota, Minnesota, Nebraska and Iowa; that at the time the 95 cent rate was authorized, Mr. Haskell said that the competitors could not make powder at a profit at 95 cents; and that Mr. Bumstead said that that price was low enough to get the competitive black powder business.

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Messrs. Coyne, Haskell, Patterson and Bum-

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stead denied that there was any general 95 cent rate authorized; and the effect of the testimony of the defendant's witnesses in that behalf is that such prices were made only on special application presented through their representatives in the field, and were passed upon by the sales board on their merits, and either granted or denied as it was considered necessary to protect their trade. Mr. Bumstead denied that he sent any such telegram as was referred to by Mr. Brewster or that he had any knowledge of such a one being sent; and that he never said that the 95 cent price was low enough to get the business of the competitive black blasting powder companies. Mr. Coyne said that the defendant lowered its price because it knew that many reputable powder companies were selling at 95 cents, and further that as their average price in the Chicago district in 1906 and 1907 was 98 cents, that was an indication that the major portion of it in that district was sold at 95 cents; and Mr. Bumstead mentions the American, Buckeye, Miami and United States Companies as being responsible for that price.

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Exhibit 1437, entitled "A resume of Buckeye Powder Company," was produced on the demand of the plaintiff for the Brewster report; and while Mr. Bumstead identifies it as a report made by Mr. Brewster at about the time the report called for was made, it would appear from his testimony that that was not the only one that he made at that time. This report purports to give the names, location and annual consumption of customers of the Buckeye Powder Company in the several districts in which it did business, the greater number of which appear to be in Illinois. It also gives the differences in price and freight between the Buck-

eye Powder Company's shipments and those of the defendant.

An examination of these four exhibits, namely, the Rice list of contracts, the list of consumers to whom the defendant gave the 95 cent rate, the Brewster report, and the statement of average prices for 1903 to 1908 of the defendant's sales, will be helpful in getting some understanding of the trade conditions that prevailed in the Chicago district during 1903 to 1908.

The Rice list, which concerns matters of earlier date, shows, as you remember, the contracts (98 in number) that were made in 1903 and 1904 between the du Pont interests and the consumers of powder in the Peoria and Springfield, Illinois, coal fields and adjoining territories. Of these, 58 expired in 1906, 21 in 1907, and 8 in 1905. The plaintiff did some business with a number of these consumers, Applegate & Lewis, Clark Coal & Coke Company, and the Maplewood Coal Company being familiar names of that number, and concerning which there is quite some testimony in this case.

The Brewster report, to which we have just referred, and following which the 95-cent rate was authorized, gives the names of ninety-odd consumers as customers of the Buckeye Powder Company, of which about fifty (50) are in Illinois; and the 95-cent rate list shows that between May 5, 1905, and October 8, 1907, 87 contracts, founded upon a very much larger number of authorizations, however, were made at that rate by the defendant with consumers in the Chicago, St. Louis, Cincinnati, and Kansas districts, forming or being a part of the Central States, of which 46 were in Illinois, 32 in Indiana, 7 in Ohio, and one each in Kansas and Missouri. Out of this total number of 87 only four appear to be with persons given on the Rice list, so

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that almost all the consumers to whom the 95-cent rate was given are in addition to those found on the Rice List. It further appears that of the alleged customers of the plaintiff on such Brewster report—about 20 in number as I recall it—were or became the defendant's customers, though the plaintiff did some business with some of them thereafter. By this method of securing trade, therefore, the defendant succeeded in excluding from the open market a very large part of the trade of these districts, and its purpose in so doing is of important determination upon the question raised in this case whether the defendant was guilty of an attempt to monopolize the powder trade.

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Exhibit P-1219, already referred to, which is the comparative statement of the average gross price of powder sold by the defendant in its sixteen different districts during the years 1903 to 1908, shows that in the Chicago district the price dropped from \$1.22, in 1903, to 98 cents in 1907, and that it increased to \$1.08 in 1908. During the time that the plaintiff was actively seeking trade the prices in the Chicago district fell year by year, but this seemingly was the same result as appears from such exhibit generally speaking, as in the other districts of the country. That the price varied in the different districts, and that there were economic conditions that would warrant this difference in price in these different districts are matters that admit of but little dispute. These prices were also differently affected in the several districts by different competition. That some controlling causes worked in the lowering of the prices in all of these districts between 1903 and 1907, inclusive, is manifest by an inspection of this exhibit, as is also the fact that a rise took place in the year 1908 in all of such districts except that termed the "Duluth District,"

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where the price remained the same as in 1907. There is dispute as to the cause of this rise in the Chicago District, the plaintiff contending that it was due to the fact that by 1907 it had been practically forced out of business, and that its inability to further cope with the defendant in the struggle for business was made manifest to the defendant, and thereupon the latter arbitrarily advanced the price in the following amounts: 98 cents, \$1.05, \$1.10 and \$1.15, different periods, and that such latter price was maintained for a long period thereafter. The defendant contends that the condition of the plaintiff had nothing to do with the rise in price in 1908, but that it was due solely to the increased price of nitrate of soda, which was an important ingredient in the formula for making powder. If the rise in price is due to the cause alleged by the plaintiff, then the question arises, what significance is to be given to its reflecting upon the past competitive conditions and the attitude of the defendant? In 1907 there also appeared for the first time since 1903 a regular price list issued by the defendant, and that is said by the plaintiff also to be significant upon the defendant's attitude during the previous years of marketing its product. The significance is said to reside in the fact that the absence of a regular price list of the defendant during the period between 1903 and 1907 was caused by its making special prices during that period to secure the trade, and that in such way the prices were unstable and the trade purposely kept unsettled that the defendant, as the largest producer of powder, might get the benefit of such uncertainty, being ready to take the trade at any price. That prices are apt to lower during periods of strenuous competition is one of the usual results and that they will rise again after competition is at an end is

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likewise a trade axiom; and that the survivor in the contest is the only one that gets the benefit of such a rise is inevitable.

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In considering the competitive conditions in the central states, of which the Peoria and Springfield, Illinois, coal fields are but a small part, you will, of course, not lose sight of the fact that others than the plaintiff and the defendant were competing for the trade. Mr. Brewster, a witness for the plaintiff, and others called on behalf of the defendant, in giving the defendant's competitors in that territory, mentioned the Excelsior, of Kansas City; the Senior, near Cincinnati; Miami, near Xenia, Ohio; Egyptian, near Marion, Illinois; Austin, near Cleveland, Ohio; Equitable, near Alton, Illinois, and the United States, near Terre Haute, Indiana, which made seven outside of the plaintiff and the defendant. Some other smaller or more remote concerns were also mentioned by some of the witnesses whose names I do not at this moment recall. Of these just named, the defendant held 49 per cent. of the capital stock of the Equitable, and about 33 per cent. of the capital stock of the Austin.

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That competition carried on by such a number, striving with more or less zeal to obtain trade in the central states, would, in the absence of artificial restrictions, be more or less keen and troublesome must be assumed, and in dealing with the question whether the defendant, in inaugurating or using the methods employed by it to secure trade in that territory, was acting on the defensive and simply endeavoring to protect its legitimate interests, such competition must be considered; but in so doing it must not be forgotten that during this time, or the greater part of it, it had the greater part of the trade which it obtained through the contracts mentioned in the Rice list and which, you will remember, came into existence while the trade association

lasted, and which were then unlawful because undue restraints of trade; so that, if in the competitive struggle it was of its own initiative or forced upon it by its competitors, its endeavor was to add to the trade thus secured to itself, and that by this larger amount of trade thus removed from open competition its competitors in the territory containing such restricted market would be unable to get sufficient trade to carry on a profitable business, thus minimizing or removing them as competitors in that territory, such endeavors constitute attempts to monopolize.

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In addition to this, the making of this 95-cent rate, general or special, as applied to the Central States, is to be considered in the light of the fact that the defendant was a large producer, having plants located in different parts of the country, the normal markets of each being within such area of its different plants as could readily be reached by them respectively. Such a trader has an advantage over a competitor who has but one location, as the former can recoup its losses, if any, in any particular district, or can add to a low amount of profit in such a district, from the profits, if any result, from its operation in other districts.

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Intent, therefore, in the making of such 95-cent rate, as already noted in the instance of other steps, is the crucial matter. Intent, of course, is an act of the mind, and where the person having the mind in which an intent is formed fails to disclose it by words, we may turn to his acts, and if they furnish the evidence of intent, we may accept such conduct as evidence of the intent. If the remarks attributed to Mr. Haskell and Mr. Bumstead, by Mr. Brewster, which are that Mr. Haskell said that the competitors could not make powder at a profit at 95 cents and that Mr. Bumstead said that such price was

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low enough to get the competitive black powder business, are true, they would be rather significant upon the purpose of making that 95-cent rate, for you will remember that such remarks were said to have been made by both of these men after that rate had been determined upon and which, as you recollect, is said to have followed the making of the Brewster report, and which report contained the names of alleged customers of the plaintiff. Mr. Bumstead, you will remember, denied making the remark attributed to him. Mr. Haskell, as I recall it, was not called as a witness after Mr. Brewster had testified. As between Mr. Brewster and Mr. Bumstead is here raised for your determination the question of veracity and accuracy; but, as to the statement attributed to Mr. Haskell there seemingly is no denial.

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Up to this time, in our consideration of such of the alleged overt acts as I have dealt with and such of the testimony in relation thereto to which I have referred, they have been treated as separate subjects. There is much other evidence, pro and con, relating to these and other alleged overt acts but as to which I make no reference, not because they may not be significant upon the broad question of whether the defendant is guilty of attempts to monopolize the trade, but because, as I stated at the beginning, the exhaustive arguments of counsel on both sides precluded the necessity of my making reference to all the disputed facts in the case; but those which I did deal with were selected because they were to my mind the more prominent instances and around which have gathered more of the disputes and contentions of counsel. They were the storm centers, and when you have mastered these and determined what the facts are as to them you will be in a position to see more clearly the relationship and signifi-

cance of the other matters disputed and undisputed as well as those specifically referred to. You will, of course, take these other matters under consideration and find the facts in regard thereto the same as you will do in regard to those that I have specifically referred to. In your consideration of all of them, of course, you will keep in mind that the burden of proof as to what the facts are in these particulars is upon the plaintiff, and that it is not incumbent that the defendant established its contentions in regard thereto. What the plaintiff fails to prove by a preponderance of evidence must be resolved in favor of the defendant, so that not only do you find for the defendant in case the weight of evidence should preponderate in its favor, but also in every case where there is a balancing of the evidence; so that, as far as these allegations of overt acts are concerned, the defendant is entitled to your verdict in every case where the prepondering weight is not in favor of the plaintiff's contention. Now, if you find that such acts were not committed by, or if committed, were not chargeable to, the defendant, you will render your verdict in its favor; but if you find that they, or some of them, were committed by and are chargeable to the defendant, then the next question for your determination is whether they establish that the defendant was guilty of an attempt to monopolize the powder trade.

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You, in your consideration of the facts, of course, will endeavor to ascertain whether they stand isolated or are steps in a general plan. If they are the former, that is, separate and disconnected, I think you would have great difficulty in finding that they show such an attempt at monopolization as is necessary to maintain this suit. It, however, you find that they bear a relation to each other and the facts satisfy you, in the manner that

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I have charged you, that they are part and parcel of a general plan, or steps in a deliberate purpose, the question then is: What is that plan or purpose? Such a plan might be either legitimate or illegitimate. Was such plan or purpose to merely protect the legitimate interests of the defendant in the trade, that is, was it for the purpose of protecting such part or all of the trade which it had acquired theretofore by legitimate means, or which, by reason of its capacity and ability to supply, it was reasonably entitled to in free and open competition; or was it to harrass and oppress its competitors so that in the end, be it near or far removed, they would cease to be independent competitors and leave it master of the market? If you find that such protection, and not oppression, was the purpose and the use made of such steps or parts of a plan, then the defendant is not liable in damages simply because as an incident to the carrying out of that plan a competitor was injured in his business or property. No one who enters into a competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable in damages to such other. Competition, as it exists under the laws at this date, has within it the element of fight. It permits fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some one in that fight has been injured, and perhaps irretrievably injured in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully liable to compensate for the losses sustained by

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the injured party. It is only when the injury is sustained by reason of the things forbidden by the Anti-Trust Act that compensation can be recovered, and the things that are forbidden, so far as pertinent to this case, are those that constitute an attempt to monopolize, that is, to suppress competition. If, however, the plan and purpose and the use made thereof are to cripple the competitor and such step or parts of such plan as carried out directly and naturally tend to the suppression of competition, no matter how slow the development of such purpose or gradual its consummation, and a competitor is injured in his business or property by reason of the carrying out of such plan, then the author and user of such plan is liable in damages for the loss thus sustained. Now, in view of what has been previously stated, it is hardly necessary for me now to reiterate, but I do so, that upon all of these questions you can only find that the purpose and use made of such steps were to suppress competition if the evidence preponderates in favor of such a conclusion. If the facts in the case as found by you fail to prove that the defendant is guilty of attempts to monopolize the powder trade, then your verdict must be for the defendant. If, however, they do prove such attempts then, and then only, arises the question whether the plaintiff has proved that it was injured in its business or property by reason thereof and of what it has proven itself to have lost by such injury.

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Injury by reason of attempts to monopolize is the gist of this action. If the plaintiff sustained its injury from other cause it cannot maintain this action, and as the defendant insists that its failure to make a profit was not due to any of the acts of the defendant, but to its own lack of proper

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capitalization and equipment, its failure to produce a satisfactory powder to the trade, and its failure or disinclination to sell the powder that it could make, it is necessary that the evidence in regard to these counter charges should be considered by you.

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As to the properly equipped plant: You have the testimony on the part of the plaintiff as to obtaining a favorable site, and the construction and equipment of the plant, the employment of competent salesmen and the efforts that were made to secure the trade, and the results. You have also the testimony of Messrs. Olin and Pierce as to how they found such plant, and these will be again referred to under the head of damages. In connection with this subject you will also consider the disputed testimony between Mr. Waddell and Mr. Rice as to what was said at the Handicap Meet at Kansas City while Mr. Waddell was still in the employ of the defendant, where, according to Mr. Rice's testimony, Mr. Waddell made overtures to interest him to go into the powder business, and that upon Mr. Rice's declination stating, in substance that he didn't care to get any nearer the business of manufacturing powder than he was, Mr. Waddell said that "he would not of necessity make very much powder; the plan was to make prices." First, as to the truth of that interview; it is a disputed matter and it is for you to determine. If you find that Mr. Waddell never made such a statement—and he denies that he made it—of course, it would have no relation to the present subject we are considering; but if you should find that he made that statement, then the question would arise that notwithstanding here was a plant erected and equipped to make powder, whether it was sufficiently capitalized to stand the stress of

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such severe competition as would arise through fair and legal methods, or whether such company was capitalized more for the purpose of forcing a sale of it to the manufacturers than in the field, after having proved its ability to manufacture both powder and prices. The capitalization was only \$100,000, as I recall it, although other large amounts were obtained and used by the plaintiff during the course of its operation. Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company, of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form or another of such newcomers, and at least in one instance—that of the Indiana—at a considerable profit to the owners of that company. Of course, Mr. Waddell, or the company which he formed, had a right to go into business, and the motive for entering into such business is of little moment, so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means.

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As to the quality of powder: The evidence warrants the conclusion that by far the larger part of

the plaintiff's powder was of proper quality. The use made of powder, however, is such that even an occasional lapse from the proper quality is bound to reflect heavily upon new manufacturers, for less consideration would normally be given to it when some of it was discovered not up to the standard than if it were the product of a manufacturer of long standing, for in the latter case the consumer would ordinarily conclude that such falling off was but temporary, while in the case of a new concern that conclusion is not as likely to obtain, with the necessary result that more difficulty would be encountered in reinstalling such powder by the new manufacturer than one of long standing. The defendant further insists that in the mines where the miners forced the plaintiff's powder out, while it might be that such miners were prejudiced against it, that their prejudices were a sufficient reason for its rejection and that because the defendant became the beneficiary in consequence thereof, it did not make it responsible for such prejudice or any other reasons that were influential in ousting or excluding the plaintiff's products. The more or less force of this reasoning is for your determination, as is also its application to the particular cases where the plaintiff's powder was rejected or refused entrance.

As to the unprofitableness being due to failure or disinclination to work up to the plaintiff's capacity; the evidence shows that the plaintiff's output reached its high-water mark at the close of the year 1904; and that from that time it began going down, each six months' business thereafter generally showing a decrease over the one preceding it. The evidence relied upon by the defendant as indicating a refusal to accept business or to work up to capacity, is based upon the plaintiff's answer to the defend-

ant's letter of October 24, 1907, which is Exhibit 1221. This letter from the defendant asked if the plaintiff could help it out with some powder, and at what price, and how much per month, and during what months they could so supply it. This was following the explosion of the Indiana mills at Fontanet. To this the Buckeye Company replied under date of October 26, 1907. Exhibit P 1325, that it had been the company's policy for the past year to operate only 40 per cent of its capacity—merely enough to fill current unsolicited orders, and that they had no powder to offer. Mr. Waddell, in explaining this declination, said that they were not seeking an extension of their business; that they had already declined to supply Mr. Olin, who wanted 20,000 kegs after having supplied the Egyptian Company with 6,400 kegs; and that plaintiff did not have sufficient working capital at that period to increase its business. Of course, it is to be noted that plaintiff was then nearing the time when it ceased to manufacture powder. The 95-cent rate, issued by the defendant, had been in existence then more than two years, during which the plaintiff's sales were lessening. If the defendant's wrongdoing was responsible for the gradual loss of plaintiff's business, the fact that it in the latter part of 1907 was unable by reason of the lack of capital to respond to this demand for powder, as also the fact that it did not at that time show a desire to accept business, would have little, if any, significance.

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Of course, if you find that the plaintiff's failure to grow in its business and to carry it on profitably was due, not to the alleged wrongful acts of the defendant, but to its lack of capital or the poor quality of its powder, or to its failure to run its mill more nearly to its capacity than it did, it cannot recover, for it is only in those cases when injury is sustained by reason of the doing of things for-

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bidden by the Anti-Trust Act that a suit of this character can be maintained.

Now, as to damages; the plaintiff claims that it was injured and damaged by the unlawful acts of the defenadnt as follows:

- 7487 \$47,935.94, as loss sustained in the sale of its plant and real estate; the plant here being considered as a physical, tangible property; and
- 7487 \$135,242.13, which it claims was the value of the good will of its business; and
- 7487 \$67,404.90, as the loss of the profits on the powder actually made and sold by it; and
- 7487 \$153,845.10, the loss of profits on the number of kegs that it could have made and sold in addition to those that were actually sold, making a total of
- 7487 \$404,418.07.

7488 If you should reach the question of damages, the plaintiff will be limited to compensation for the actual injuries sustained. The seventh section of the Anti-Trust Act authorizes the recovery of treble damages; but you will have nothing to do with the trebling of the damages, your function in this particular being limited to ascertaining the actual damages. The law itself multiplies it and that will be done by the Court. Compensation for legal injuries is the measure and the only measure of the recoverable damages. None but actual damages can be awarded by you in an action of this kind, and these must be established by facts from which they are logically and legally inferable. This rule, of necessity, excludes conjectures and unwarranted estimates or witnesses, as it does speculative, remote or contingent damages. Keeping this rule

in mind, let us consider, first, that damage which it is alleged was sustained in the sale of the plaintiff's mill which it sold to Mr. Olin. The rule here to be applied is the difference in value before and after the injury. Mr. Waddell has given us his judgment of the value of this plant, but for the alleged acts of the defendant, and the books of the plaintiff were put in evidence and are relied upon as giving the exact cost of the land and construction, and which show that land and plant were carried as having cost \$118,385.94. Passing for the moment the attack made by the defendant upon these books as furnishing even a correct account of such cost, I charge you that what a party pays for property, whether he buys it outright or pays for its construction, is not, in itself, the test of value, although such price constitutes a circumstance to be considered and weighed in connection with other evidence. This is the rule as to the ascertainment of the value of property generally, but it is peculiarly forcible as to manufacturing plants. Generally speaking, the price paid for the land and in the construction of a residence or ordinary business building thereon, furnishes a fair guide as to its value; but this rule is of but little help in the case of a manufacturing plant. A manufacturing plant may obtain value greatly in excess of its cost, or it may fall far below it. This is true because the selection of the site, as well as the plan and character of the buildings erected thereon is determined by the nature of the manufacture that is to be carried on; and the value of the plant, therefore, depends largely, if not entirely, upon such manufacture proving profitable. If the venture is disastrous the market for that particular class of property is very much depressed by reason of such failure. At best, the market for that kind of property in such

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circumstances is much more limited than for property adapted for residential or business purposes. The cost of the site, as well as of the construction and equipment of manufacturing plants are, therefore, never to be taken as conclusive evidence of value, and the persuasiveness of such as evidence of value depends very much upon other conditions.

7493 In this case it is said that the site for the purpose of manufacturing powder was worth considerable more than it cost. This is not an impossible thing; but that, of course, depends upon whether it is peculiarly adapted for the manufacture of powder. This increased value the plaintiff insists is due to its favorable location, both on account of the contour of the land utilized, and its being near a large consumption of its product, and having exceptionally good railroad facilities, and its location, as I understand is considered favorable on account of its detonations which might happen in case of explosions. Mr. Waddell has given the increased value at \$4,550 and his reasons why this is so; but the actual value of land for any purpose, 7494 as well as its enhanced value for particular purposes, may vanish entirely if the venture to which it has been applied should prove disastrous. The cost of putting up a manufacturing plant is likewise not conclusive, and its persuasiveness as evidence of value depends upon so many other conditions, that such conditions, rather than the actual cost, are more likely to furnish the true guide as to its real value. In the building of a manufacturing plant the particular purpose to which it is to be applied, as well as the character of the material used and the skill and experience of those who are constructing it, largely affect the cost of such improvements; and if the manufacture subsequently carried on there should prove unprofitable,

much of such cost may be valueless, but as this particular plant was purchased to carry on the very kind of manufacture for which it was built, and as it therefore suffered no loss on account of its having been taken for other purposes, we are concerned here only in ascertaining what it was really worth for the purpose for which it was originally intended.

On behalf of the plaintiff it is insisted that by reason of the acts of the defendant which made such manufacture less profitable than it would have been except for such acts, the market for such manufacturing plants was unduly limited, and that the cost of the plant, rather than the amount realized from such sale, furnishes the criterion of value. Furthermore, it is testified by Mr. Waddell that the plant was exceptionally well built and kept in good repair. On the other hand, it is said by Mr. Olin who made the purchase, and Mr. Pierce, who was employed by Mr. Olin to pass upon the efficiency and value of the plant and equipment before it was purchased, and who subsequently managed its operations for a time, that the plant by reason of some defective constructions and lack of repair in the particulars named by them, was worth no more than had been paid for it. Here is a question of fact which you must deal with. As I have said, cost is not very persuasive evidence of value. If in part it was defectively constructed, it will readily be accepted that much, if not all of the cost, as represents defective construction, will have to be deducted from the total cost. Furthermore, a manufacturing plant is one peculiarly subjected to deterioration, whether in use or not, sometimes to a greater degree when not used than when in actual use. The way in which a plant is constructed or repaired, as necessities require, is therefore an im-

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portant element in the determination of its value. A manufacturing plant may for a long time satisfactorily to serve the purpose of its construction, and yet be constantly lessening in value. It is, therefore, a common practice of manufacturers, having that in mind, to charge off annually a certain percentage for depreciation, that the book value may be kept close to its real value. What this percentage should be depends, of course, in part upon the character of the manufacture carried on, how well the plant is kept in repair, and what wear and tear is encountered which has not called for immediate repair, and for how long such wear and tear has been going on. Matters of this kind are to be kept in mind and considered in making your final determinations as to whether the plant was worth more than received and, if so, how much more.

The plant, after several futile attempts to sell, was sold to Mr. Olin for \$75,000.

The book value of the plant, as already stated, is \$118,385.94. This, of course, you will note, is what the plaintiff claims the land and plant actually cost. The method of book-keeping employed by the plaintiff has been attacked, and of course, the first inquiry as to the effectiveness of such books as evidence is whether they have been fairly kept and with accuracy record the financial transactions of this concern. The Court admitted the books because, from the evidence as to the manner in which they were kept it considered them sufficiently proven to go to the jury; but this action of the Court related merely to their admissibility. Their effect and weight as evidence is for you to say. If you find that they have been fairly kept and do record the financial transactions with accuracy, of course, they are evidence of what they contain.

If not, and by reason of such unfair and inac-

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curate method of keeping them, you can not ascertain with certainty what those transactions were, the books must be discarded by you as valueless. If, however, you find that they have been fairly and accurately kept, then resort may be had to them for the different purposes for which they have been offered in evidence, one of which and that which now concerns us, being the book record of the cost of the plant.

If the books are to be considered by you on this question, then, in addition to what I have said to you with reference to the limited effect you are to give to cost in determining what is the value of the plant, you will take into consideration the evidence that bears upon the charge that some of the items which make up this amount of cost, can not properly be charged to plant. These items, as I recall them, are the salaries paid to Mr. Waddell and his sons and certain items of reconstruction due to explosions. During the time the plant was in actual course of construction, any salary that was being paid to persons who were contributing by their services to such construction, would be properly chargeable to such account; but no salaries after the construction was finished or of any persons during the period of construction that did not contribute value to such construction, should be so charged.

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Mr. Graham: Our contention was, sir——

The Court: I don't mean your contention, sir; I mean my statement. I have made some corrections here and I am not sure that I stated my own proposition correctly. Yes, I think I did state it so, and in order that it may be stated again and be sure of it I will repeat.

In the matter of explosions; several occurred during the period that plaintiff's mills were in opera-

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tion, but the only one, as I understand it, that is involved in the present attack that the loss sustained thereby was not charged off construction was in January, 1904, which according to Mr. Waddell's testimony cracked a cylinder of an upright press, which press was thereupon abandoned and another one of a different type already on hand substituted. I don't know whether I have got that statement correct or not. The books, seemingly, do not show that any deduction from the construction or improvement account was made by reason of the abandonment of such damaged press, and Mr. Waddell does not know whether the cost of such abandoned press was charged off on such account or not. From this it is evident that the book value of the plant can not be accepted in toto, and that some deduction must be made therefrom on account of that explosion; and, as the plaintiff has not borne the burden of proof which is upon it, you will, in making such deduction, charge off enough to insure that all the cost of such abandoned press is deducted from such book values.

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Now, as to the salaries of the Waddell's; the plant began to make powder about November 1st, 1903, but the entire construction work had not then been completed, for, as I recall it, the books show that about \$34,000 worth of construction work was done between that time and June 1st, 1904. It appears, however, that all the salaries of the Waddells in the months of November and December, amounting to \$1,000, were charged to construction or improvement account, and that of \$3,026.00 of salaries between January 1st and June 30th, 1904, \$1,750 was charged to construction; and the question raised here is whether any or all of such \$1,000 for November and December salaries, and any or all of such \$1,750, charged to construction account,

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should not have been charged to general or running expenses. If you find that any or all of this should have been charged to the expense account, then, of course, you will make a further deduction from the book values of the plant to the extent that you find should have been charged to expense account.

When Mr. Olin took charge of the mill he spent considerable moneys upon the plant. He stated that such expenditures amounted in round numbers to about \$100,000. Some of the moneys expended by him undoubtedly were for new or additional improvements, and as to some others there is a question as to whether they were necessary by reason that the plant was not in proper working order through either defective construction or lack of proper repair, or whether they were made more to suit Mr. Olin's ideas as to how a mill should be arranged and constructed.

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That is a matter of course, for you, as you have the different testimonies of the witnesses in regard thereto, and it will be for you to determine where the truth is, making such further deductions from the book values as from your consideration of the whole testimony bearing upon the real value of the plant at the time of its sale, you are satisfied should be deducted.

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So far I have been dealing with the value of the plant simply as a tangible or physical property. A manufacturing plant, however, may have another and additional value, namely, its good will; and as the plaintiff claims that it has suffered damages to its good will, that phase will now be considered. Good will may be defined for present purposes as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein in consequence of the general public patronage and encour-

agement which it receives from constant or habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices." Establishment of a profitable business is the essential of the good will. Where that does not exist there can be no good will.

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The very contention of the plaintiff on another branch of the matter of damages is that from September 18, 1905, until the time that it ceased doing business, it was conducting an unprofitable business; and as the losses said to have been incurred during this period largely overcame the profits claimed to have been made for the twenty-two months preceding we have as the only basis for a good will, not that a pecuniary advantage or benefit was secured by the plaintiff during the time it was in business, but that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

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True, a person may be wrongfully prevented from acquiring a good will; and ethically such a wrong is just as injurious as if an established good will was injured by such wrong doing. The rule in allowing as well as estimating damages, however, is a practical, rather than an ethical standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good will for the purpose of giving it a value when no past conditions establishing a good will exist, would be but a pure speculation, and therefore not allowable. The claim of damages for good will therefore must be disallowed.

As to the loss of anticipated profits; as to this the claim is divided into two classes; (1) upon the powder actually sold, which it is said is 224,683 kegs;

and (2) as to that which was never made, but which it is claimed would have been made except for the unlawful acts of the defendant, amounting to 512,817 kegs. As to the first class—those made and sold—plaintiff claims that they were sold at an actual loss, and, if the figures presented to us from the plaintiff's books of account are to be taken as correct, that is so.

Plaintiff claims thirty cents (30 cents) a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair profit. The evidence does disclose that for certain periods that, and even more, profit was realized by some of the manufacturers of powder; but it also discloses that at other periods powder was sold at a price which would not warrant anywhere near such a profit. It is manifest that the illegal restraints put upon the trade by the trade associations alone permitted of that amount of profit. One, if not the main, purpose of such associations was to fix an arbitrary price for powder, and this it achieved in part by restricting the output. This, of course, could be accomplished in more ways than one, but it is needless for present purposes to inquire as to how it was done. It is enough that it was done; and, so far as this present record is concerned, the only basis for a thirty cents (30 cents) profit is that which is furnished by this arbitrary, and therefore illegal, means employed by the trade associations. With the dissolution of the association and the passing away of its arbitrary restraints imposed upon the capacities of existing plants, that amount of profit could not be long maintained unless there was such an increased demand for powder as to take the output of the mills at their unrestricted capacity. That there was such an increased demand as to bring about a profit such as thereto-

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fore was only maintained by unlawful restraints of trade would have to be shown by convincing evidence ere it could be accepted as the measure for fixing anticipated profits. It is needless to say that that kind of evidence is not contained in this record, for even if you should find, as you will have to before you even consider the question of damages, that the defendant was guilty of such unlawful restraints upon the trade as to make it liable in damages, it is perfectly clear that its efforts were largely exerted to maintain the trade which it theretofore had. In the struggle for trade or supremacy, whichever it may indicate, it is perfectly clear that there was no such demand for powder during these years when the plaintiff was operating as to warrant your finding that thirty cents was the profit which the condition of the trade then would sustain as a fair and reasonable one. If not this much, then how much? Here again we are confronted with uncertainties. That some profit would result, if trade conditions were normal, and none but the natural law of supply and demand regulated it, may be assumed; but how much? This the plaintiff must show with reasonable certainty. Upon him is cast the burden. Has he satisfied it? It is not to be determined by a guess, nor by the fact that we may believe that any unprofitableness of the plaintiff's business was due to the defendant's wrong doing; and then because of the consciousness, borne in upon us by reason of such belief proceed to arbitrarily fix the profit. Until the Congress gives a different rule to estimate damages in such cases as this the old rules are applicable, and they, as before stated, exclude mere conjecture or speculation. In consequence of this rule, were it not for the fact that the plaintiff claims that in the twenty-two months preceding September 18th, 1905, it had

made a profit notwithstanding the unlawful restraints that it says were then being exerted upon the powder trade, I should be compelled to withdraw the question of profits from you in toto; but this contention of plaintiff requires me to submit the evidence that bears upon that to you upon this question of anticipated or expected profits; for while it is the general rule that such profits are not recoverable, an exception has been made in many jurisdictions in cases where an established business has proved profitable in the past, and where by competent proof it is made reasonably certain that but for an interruption chargeable to the defendant, the amount of the expected profits would have been made. Profit alone, however, is not enough to bring an existing business within the exception. In addition, the business must have been carried on for such a length of time as to make it reasonably certain that it had passed the period of experimentation and was capable of successfully surmounting the ordinary commercial vicissitudes that beset similar enterprises. What length of time may be necessary to obtain such a status may be a question of law or fact, according to circumstances. A shorter period during which financial or industrial depression or severe competition was encountered would permit of the submission of the question whether the business was sufficiently established to admit of the recovery of anticipated profits; whereas a much longer period of business life, but during which none of such depression or competition was experienced, might as a matter of law forbid the consideration of such question at all.

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In this case the statute of limitations pleaded by the defendant furnishes a line of demarkation between the two periods of the plaintiff's business. The 18th of September, 1905, fixes the dividing line

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and the plaintiff seeks to recover anticipated profits on the kegs of powder manufactured and sold for the three years since that date. The plaintiff claims that up to the 18th day of September, 1905, and covering a period of twenty-two months, it carried on its business profitably. The average profit per keg during such period, according to this claim, is 3 1-7 cents. This price per keg is figured from \$6,470.61, which is the sum that the plaintiff claims its books show as the amount of the net profits made during the said twenty-two months and the number of kegs upon which the 3 1-7 cents per keg profit is based is 205,931. What I said to you concerning those books as evidence when dealing with the alleged cost of the plant is applicable here. It is only in case you find that these books have been so kept that you can ascertain therefrom with certainty that a profit was made during this period, and the amount of such profit, that you can use that profit as a basis for a comparison upon the question of profits during the subsequent period. If you can not ascertain what were the actual profits by resorting to such books, of course, the inquiry as to profits at all fails for the lack of proof, and no allowance of profits can be made. If, on the contrary, however, it can be ascertained from such books with certainty that profits were made, and what was the amount of them, then the next question arises whether this period of twenty-two months was sufficiently long in view of the trade conditions prevailing, whatever may have been the cause thereof, to establish with reasonable certainty what the anticipated profits for the period subsequent to this 18th day of September, 1905, would have been if normal trade conditions had prevailed. Now, according to one contention, normal trade conditions did not obtain during this twenty-two months end-

ing with the eighteenth day of September, 1905, while according to another contention that the conditions prevailing during that period, as well as during the period following, were normal; and that they were just such conditions as would be likely to follow the abandonment of the Trade Association, which you know finally was dissolved in June, 1904. Whether they be normal or abnormal, if it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent years. If you should find that it isn't sufficient to furnish such a basis, even though you should have found that during the twenty-two months the plaintiff made a profit, the further inquiry as to profits during the remaining years must end, and no profits can be allowed. If, however, you find that it does furnish a satisfactory basis, then you will allow us profits upon the kegs manufactured during such subsequent period all or so much of such 3 1-7 cents per keg as you shall find was the profit per keg on the 224,683 kegs as is shown were made during the three years following September 18, 1905.

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The defendant challenges the correctness of the sum alleged to have been made as profits during the twenty-two months referred to, claiming that the items of salary paid to the Waddells, and the loss sustained in the explosions, one of which I considered a short time ago, when dealing with the question of the book value of the plant, should have been charged to the running or working expense during those twenty-two months, instead of to construction, and that if they had been this amount

7528

Court's Charge

would have been totally wiped out. If that is the fact, of course, there is no standard here upon which you can calculate profit for the 224,683 kegs which were made and sold; but if you should find that only a part of such salaries and explosion losses, and which were charged to the construction account, should have been charged to running expense, and after deducting from this sum total, namely, \$6,470.61, such amount so found, there remains a profit, that profit will furnish the standard; and when you have ascertained the price per keg such profit represents that will be the profit per keg, and not the 3 1/7 cents per keg that has been allowed as the anticipated profits upon the kegs actually sold. In order that you may have these figures before you, I have prepared a table which will be handed you when you retire.

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As to plaintiff's further contention that it is entitled to its loss of profits on the number of kegs of powder which it would have been able to make and sell, but for the acts of the defendant over and above those which it actually made and sold; this question, if it could be submitted to you would only obtain if you should find damages for loss of profits on the kegs actually made and sold during that period. If you did not so find you could not find anticipated profits on those not made, even if it were to be referred to you. You will note that in this further claim for profits there is another and a very important element to be considered in addition to those considered in the submission of the last proposition. In the last proposition the number of kegs actually manufactured and sold was a subject capable of exact ascertainment, whereas in the one now being considered the number that might have been made and sold is not susceptible of actual proof. While the capacity of plaintiff's mills is a subject capable of exact determination,

so that one of the elements involved in this question of the number of kegs not manufactured could be determined, yet because of the plaintiff had a capacity of making 250,000 kegs annually, it does not follow, even assuming that the defendant is chargeable for the abnormal condition that prevailed during such period, first, that the plaintiff would have made that number or could have found a ready sale for them; or, second, that it could have marketed any that it made at the same price as it did market those actually sold. The trade conditions in that district within which the plaintiff operated were unquestionably disturbed. Severe competitive conditions existed there. Not only did the plaintiff fail to manufacture to the utmost of its capacity, but it was either unable or it purposely declined to make the same proportion during the latter part of its operation as it made in the earlier period.

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As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise. As already observed to you, the Anti-Trust Act provides for a trebling of the damages recoverable in actions of this kind. Such trebling of damages is not a penalty, however, but it is a legislative recognition that there may be injuries sustained which, under existing rules, applicable to the measuring of damages, cannot be ascertained. The trebling of such as can be ascertained, therefore, was undoubtedly intended to meet such a condition and by means of which much, if not all, of that class of damages may be secured, without doing violence to rules that have proven their practical serviceability in damage cases,

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Court's Charge

through many years of juridical experience. If further commercial experience should show that trebling of damages fails to secure substantial justice to the injured party, Congress, which has the power, may go beyond the trebling of such damages and multiply the same many fold. This claim of damages, therefore, as well as that made for good will, is withdrawn from your consideration.

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In conclusion, let me reiterate what I said at the beginning, that before the plaintiff can recover it must prove by a clear preponderance of the weight of the evidence, first, that there was an attempt on the part of the defendant to monopolize the trade, and that by reason thereof the plaintiff was injured; and, secondly, what was the kind and amount of the damage that it thus sustained. If you find for the plaintiff, you will state first the total amount of damage; second, how much thereof, if any, is for the loss sustained by it in its investment of its manufacturing plant, which means the difference, if any, obtained on the sale and what it was actually worth; third, how much thereof, if any, is for the loss of profits sustained by it on the powder actually manufactured and sold by it. In no instance will you include interest, as that is a matter of exact calculation and can be readily ascertained by the Court if it, as a matter of law, should be included.

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If you find for the defendant, you will find that there is no cause of action.

Taking up the defendant's requests to charge, I give the following in the language requested:

The fourteenth, I charge in the language requested, and that is: "That there is no proof of the following overt act alleged in the complaint and therefore you must disregard it, namely: That the said powder company organized and maintained a

sales board which fixed prices and established policies with all of the defendants named in the complaint which all were compelled to maintain and observe, and that the prices so fixed and maintained were always arbitrary and were so fixed as in certain territory to leave substantial and sometimes excessive profits, and in other places where it encountered competition, were reduced to prevent competition, and that plaintiff was for a period of five years continuously forced to meet the prices thus fixed."

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And I charge you that there is no proof in the language employed by the plaintiff. The proof does show that there was a sales board as a part of the carrying on of the business of the defendant, but the evidence does not justify the conclusion that the prices fixed and maintained by such board were always arbitrary and that they were so fixed as to produce excessive profits in any territory.

The fifteenth, I have covered in part. The sixteenth I decline. Also the seventeenth and eighteenth. The nineteenth I have charged. The twentieth I will charge: "In considering any claim of the plaintiff to the effect that it should have received more money for the powder it actually sold than it did receive, the jury must determine whether or not such condition was due to the poor character of the powder or to want of skill in manufacture or of enterprise, and if found to be due to such cause, then no award can be made for such claim."

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No. twenty-one, I have charged in part. Twenty-two I decline to charge. No. twenty-three I will charge in the language requested: "If the jury believe that the prices which plaintiff received for its powder, although lower than those that prevailed during the life of the trade associations, were the prevalent and normal prices at the time it was

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Court's Charge

engaged in business, it can not recover damages on that account."

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The twenty-fourth, declined. The twenty-fifth, declined. The twenty-sixth I have charged. That relates to good-will. The twenty-seventh I decline to charge. The twenty-eighth I will charge in the language requested: "The plaintiff has no right to expect more profit on the powder sold than was derivable from the fair market value of its product during the years it was in business. It has no right to fix upon what Mr. Waddell deems a fair profit and claim compensation for the loss of that."

The twenty-ninth, I also charge you: "The plaintiff can not recover damages because it did not receive what it claims was a fair profit on its investment nor what it may consider desirable or proper, as any recovery must be based on what the plaintiff actually would have received in the absence of any violation of the law, even if you find such violation to have occurred."

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The thirtieth I decline to charge. The thirty-first and thirty-second I have charged. The thirty-third I decline to charge except in the manner I have already covered that subject. The thirty-fourth I have charged.

The thirty-fifth: "The fact that Mr. Waddell, Sr., testified that he told certain persons certain things is no evidence of the truth of things related, as, for instance, his statement that he told Coyne and Simpson that money had been paid to miners."

And in that connection it is proper to add that the issue there raised was offered on the part of the defendant when Coyne and Simpson were examined as to statements made by Waddell with reference to his charges against the defendant in dealing with him unfairly in certain particulars and his alleged statements that for certain considerations he would

abandon his claim of damages against the defendant. The defendant's purpose here was to show motive for such acts, and animus in bringing it, for the purpose of discrediting him as a witness, and to minimize the effect of the testimony given by him in this cause. That being its purpose, Mr. Waddell had the right to give his version as to what took place at that interview and to negative the idea that he was actuated by such a motive and to sustain himself as a witness before you as one entitled to the credit that is given to a witness ordinarily.

7544

In dealing with the statements pro and con made by the parties to this interview, you jurors must keep in mind that such statements as were given whatever they might be are not in themselves proof of the facts therein asserted. The only matters presented by the testimony bearing upon this interview relate to what was said, and not whether it is true. And the results, if you should find that Mr. Waddell did say to Coyne and Simpson that certain miners said to him certain things as having been done or said by the agents of the du Ponts, and that Mr. Waddell made certain replies as to such miners, that does not show either that these things were said or done by the defendant to the miners, and that the miners told it to Mr. Waddell, but simply that Mr. Waddell told such things to Coyne and Simpson.

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It is your province therefore simply to determine what version of what took place at this interview is the correct one. If you find that the version given by Messrs. Simpson and Coyne is the correct one, then such finding would be an important factor in determining what credit is to be given to Mr. Waddell as a witness in this case, or the weight you will accord to his testimony.

If you find on the other hand that what Mr. Waddell said is the correct version of what took place at such interview, then not only is he not discredited as a witness by reason of anything that may have transpired at that interview, but such finding would also tend to discredit the testimony of Messrs. Coyne and Simpson as witnesses in other matters as to which they have testified.

7547

In this connection reference may also be made to the interview between Mr. Waddell and Mr. Piatt at Peoria regarding Piatt's efforts to secure information from railroad employees relating to plaintiff's shipments and concerning which Mr. Paige has testified and which interview was testified to by Mr. Waddell. Regarding such interview Mr. Waddell was permitted to state what Mr. Piatt said, as the Court considered that there was sufficient evidence for the jury to find in the absence of contradiction that Mr. Piatt was an agent of the defendant; and while the Court also permitted Mr. Waddell to testify what he said to Mr. Piatt at such interview, you are instructed that what Mr. Waddell said, as having been said by him at such interview is not evidence of the facts he then recited, and only what Mr. Piatt said is evidence; that which Mr. Waddell said having been admitted merely that the statements of Mr. Piatt might be fully understood, for if only what Mr. Piatt said was permitted to be testified to, much of what he said might be unintelligible as is often the case by merely hearing one side of a conversation.

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A familiar illustration is a telephone conversation. It may be that what we hear one person say in a telephone conversation is perfectly intelligibility, but generally it is not.

I decline 35, 36, 37, 38, and I decline 39 except as I have touched upon it.

Court's Charge

7549

Fortieth: "There is no evidence showing that any of the defendants knew or had anything whatsoever to do with the purpose of the Buckeye powder plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

The forty-first, I also charge in the language requested: "There is no evidence in the case to show that the defendants, or any of them, at any time exercised any control of any kind over the United States Powder Company or the Egyptian Powder Company, and therefore you must not consider any claim to the effect that they did exercise such control." 7550

I also charge the forty-second request in the language requested: "There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not consider any claim to the effect that they did exercise such control." 7551

The last one, the forty-third, I do not charge because I reserve that question.

As to the plaintiff's requests, as I recall it, I have touched upon every one of these requests, and I therefore will not charge them in the language requested but counsel may take an exception, of course, to the fact that I do not specifically charge in the precise language requested.

Now, gentlemen, there will be some business yet brought up. This is the time to take your exceptions.

(Thereupon Mr. McCarter for the defendants,

7552

Court's Charge—Plaintiff's Exceptions

took certain exceptions to the charge. Thereupon the following occurred) :

Mr. Abbott: If the Court please: We desire to enter an exception to the instruction of the Court to the jury that they return a verdict in favor of the Eastern Dynamite Company and International Smokeless Powder Company.

7553

The Court: You may have it.

Mr. Abbott: We also desire to except to that portion of your Honor's charge to the effect that the plaintiff in this case does not occupy the same situation as one who had been in the field before the unlawful combination——

The Court (Interrupting): Whatever I said in regard to that.

Mr. Abbott: We also desire to except to your Honor's instruction to the effect that there is no evidence that the defendant distributed cash to the miners.

7554

The Court: You may take an exception. I withdraw that question from the jury. *John Ballinger*

Mr. Abbott: We also except to that portion of your Honor's charge which is to the effect there is no evidence that powder was sold by the defendants below actual cost.

The Court: You may take your exception. *John Ballinger*

Mr. Abbott: We also except to that portion of your Honor's charge where it is stated that the plaintiff in this case had a paid representative present at the time of the test involved in the "Thrush incident."

The Court: You may take it. *John Ballinger*

Mr. Abbott: We also except to that portion of your Honor's charge which relates

Court's Charge—Plaintiff's Exceptions

7555

to the definition of competition and refers to it as being in the nature of a fight.

The Court: I did not define competition. I said it had in it the element of fight. You may take an exception, however.

John Bell

Mr. Abbott: We also except to that portion of your Honor's charge which is to the effect that there is no evidence that the plaintiff's plant was sufficiently equipped and financed. I may not have that just right, but the point I make is that there is evidence in the record, in the testimony of Mr. Waddell, that the plant was sufficiently equipped and financed.

7556

The Court: Yes, I said so. You have misapprehended what I said as to that.

John Bell

Mr. Abbott: Then, of course, the exception is of no force.

And we except to that portion of your Honor's instruction which relates to the withdrawal of the question of good will from the consideration of the jury.

The Court: Yes.

John Bell

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Mr. Abbott: We also except to that portion of your Honor's instruction which relates to the cost of the plant not being a true test of the value, particularly with reference to the fact that there is evidence in the record that the value of the plant was more than its cost.

Judge

The Court: Whatever I said in that respect you may take an exception to.

John Bell

Mr. Abbott: We also except to that portion of your Honor's charge which says that there is no evidence that 30 cents a keg was a fair profit, and, further, to the statement of your Honor that there is no evidence in the record as to what is a fair profit.

7558

Court's Charge—Plaintiff's Exceptions

The Court: Yes; whatever I said upon that.

Mr. Abbott: We except to that portion of your Honor's charge which limits our profits to 3 1-7 cents, or such portion thereof, as the jury may find.

The Court: That is on your own standard, although I verified it. You may take an exception to what I said in that regard.

7559

Mr. Abbott: We except to that portion of your charge which withdraws from the consideration of the jury anticipated profits—the profits that might have been made on powder that was not manufactured.

The Court: You may have it.

Mr. Abbott: We also except to your Honor's charging as to the trebling of damages.

The Court: That is a matter of law. You cannot get much of an exception on that. But you may take it. It is not in the charge.

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Mr. Abbott: And we except to that portion of your Honor's charge to the effect that there is no evidence that the defendants had nothing to do with the purchase of the plant by Mr. Olin.

The Court: You may have it.

Mr. Abbott: And also we except to that portion of your Honor's charge that there is no evidence of any control by the defendants over the Equitable or Austin Companies by reason of the fact that the defendants have a stock interest in those companies.

We also except to that portion of your Honor's charge which refuses to give our instructions, except as charged.

The Court: You may have it.

Court's Charge in re Exhibits

7561

Mr. Abbott: We also want to speak of certain exhibits outside of those mentioned by the Court. What I wanted particularly was that the books might be taken into the jury room.

The Court: All the exhibits will be taken to the jury after they have retired.

Gentlemen of the jury, you may retire, but before doing so let me say that if in the course of your deliberations you think you need further instructions from the Court, you are at liberty to call for them.

7562

In the matter of exhibits, they will all go into the jury.

Mr. Abbott: In some cases it is going to be exceedingly difficult, I think, to select, and we ought to have the assistance of the Court.

The Court: Not necessarily, unless you get into an altercation about it.

Mr. Abbott: We have not any objections to these books going in in their entirety. (Pointing to plaintiff's identifications 1 to 12.) At this late hour we think it is impracticable to make transcripts of simply the portions that are introduced in evidence.

7563

The Court: Those leaves could be torn out.

Mr. Abbott: Of course even that could not be done without showing some portions of other matters.

The Court: That is a matter for you to determine.

Mr. Abbott: For my part I do not think there is anything in the printed record that the jury would care to see excepting perhaps the Rice list. We can make a copy of that, and probably it will be ready in a short time.

7564

Court's Charge in re Exhibits

The Court: Then if you agree upon excluding any part of the evidence I will be glad to co-operate with that.

Mr. Button: All of those negotiations with T. C. du Pont and so on are in those books. They ought to go in, I should think—those proposed contracts.

Mr. Abbott: That is all right, if your Honor thinks that is proper.

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The Court: Now with reference to depositions, of course the exhibits attached to them ought to be detached, but not the depositions.

Mr. Katzenbach: I think a most serious question is with reference to the exhibits that have been marked in the Government record. I understand that they have never been copied and have never been cut out.

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Mr. Abbott: No; they are simply in the bound volumes, marked as exhibits. The original volumes have been identified by Mr. Mahaffey, and then the stamp is in there showing that they are exhibits in the case.

The Court: You can arrange that among yourselves if possible, and if not I will have to take it up.

Mr. Abbott: Take such exhibits as the trade reports—all those matters can go in?

The Court: I suppose these can be sent right in.

The Clerk: I want to get large envelopes first.

The Court: If you need me I will be in my chambers.

Mr. Abbott: Counsel suggests we cut them out. Of course we can do that if you think that is the only thing that is proper to be done in the matter.

*Court's Charge in re Exhibits
Plaintiff's Requests to Charge*

7567

The Court: Unless you agree that they do not go in.

Mr. Katzenbach: Will you stipulate then that those exhibits shall not be submitted to the jury?

Mr. Abbott: I do not see the use of submitting any of them except the Rice list.

Mr. Katzenbach: We agree that you substitute a copy of the Rice list. Give it to Mr. Chevrier; and that the other exhibits shall not be submitted to the jury—that is, those contained in the Government record.

7568

Mr. Abbott: If the jury desires access to any of them—

The Court: If they call for anything, of course they are entitled to it.

Mr. Abbott: Especially those contracts Mr. Button spoke about. We will cut those out if you say so.

Mr. Button: I don't care.

The Court: It seems to simplify itself then.

Mr. Abbott: That is down to the Rice list.

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The Court: And you are going to make a copy of that?

Mr. Abbott: Yes.

(Thereupon the jury retired to consider of its verdict in charges of James E. Van Horne, bailiff.)

The plaintiff's requests to charge were as follows:

The plaintiff requests the Court to charge that in considering the evidence in this case the jury should be guided by the following rules or principles:

The Court: Gentlemen, Mr. [] states to me that it will be impossible for him to tell what has been admitted and what has not. This must be evident to you.

I.

Eminent authorities have declared that the Christian religion is a part of the law. It may safely be said that civilization as we understand it, so far as the recognition of the individual in the community and his rights are concerned, is the outgrowth of the appreciation that dealings between man and man must be on terms of justice, and that justice requires that no man shall build up his business by acts whose purpose is to put the purchasing public at his mercy, or to exploit others for his advantage and destroy thereby the opportunities of others to exercise their talents and desires in the same field of mercantile activity. It is unjust to the community to monopolize a product, and thereby enhance, or have the power to enhance, the prices the public are to pay for it, and it is always unjust to deprive an individual of his right and power of contracting and of carrying on any lawful business he desires and selling his product at prices fixed by free competition. If in the doing of a thing, a man intends a wrongful purpose, he knows it better than anyone else can know it. If under the law, a man is presumed to intend the consequences of his acts, how much the more must he be held blameworthy, when his deliberate purpose is to bring about the evils condemned by law. If the act is wrong under commonly accepted moral or ethical standards, it always was and always must be wrong, so long as there is community life with common and relative rights belonging to each individual in the community and to the public as a whole. No fair-minded man engaged in trade, whose deliberate purpose in his acts and contracts in trade is to work injustice to his competitors and to the public can honestly claim want of knowledge of the quality of his act. "The Golden Rule" may not, as yet, be the standard

Plaintiff's Requests to Charge

7573

by which the law requires contracts in restraint of trade to be measured, but the ancient adage, "Live and let live," has its application to trade and is a safe rule to go by.

II.

It is not necessary to establish the conspiracy by direct evidence. Conspirators do not go out upon the public highway and proclaim their purpose; their methods are devious, hidden, secret and clandestine. It is enough that they have a common purpose to defraud and that they act together for that purpose.

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It is not necessary that a formal agreement be proved; it is sufficient if the testimony shows that the parties are acting together understandingly to accomplish the same unlawful purpose. Even individual conspirators may do acts in furtherance of the common unlawful design apart from and unknown to the others. It is manifest, therefore, that in many and, indeed, in most cases of conspiracy the corrupt agreement is proved by circumstantial evidence.

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III.

You are instructed that it is not necessary in order to constitute an unlawful conspiracy that those engaged in the conspiracy should be bound together by any written or specific form of agreement; it is sufficient if their acts are of such a character as to show a common purpose and that purpose an unlawful one.

Therefore, if you find that the defendants and any of their co-conspirators at any time were engaged in the common purpose of restraining interstate trade in explosives such fact would be evidence of a wrongful act within the meaning of the Sherman Act.

7576

Plaintiff's Requests to Charge

IV.

You are hereby instructed that it is not material what the degree of the restraint of trade was which the defendants exerted. It is sufficient if their acts only tended to restrain trade.

V.

7577

You may also consider in ascertaining the policy of the defendants, the acts of their associates; whether they are made parties to this suit or not, and you may consider the dealings and agreements existing between the defendants and their associates as brought out in evidence. It is not necessary that a person be mentioned in the complaint as a defendant in order to make him a co-conspirator. It is possible that the names of all co-conspirators may not be ascertained, but that fact would not change the situation, and if you find that other persons not mentioned in the complaint were co-conspirators with these defendants in connection with their acts towards the plaintiff, you may also consider the acts of those co-conspirators not named in the complaint in an attempt to ascertain the general policy of the defendants.

7578

VI.

That if the jury find that the principal holding company received and retained the fruits of an illegal combination heretofore, although it may have done no act in violation of the Anti-Trust Act, nevertheless it is a monopoly.

The combination cannot escape the condemnation of the Anti-Trust Act, merely by the form it assumes or by the dress it wears. It makes no difference whether the combination be in the form

Plaintiff's Requests to Charge

7579

of a trust or otherwise, whether it be in the form of a trade association or a corporation, if it arbitrarily uses its power to force weaker competitors out of business or to coerce them into a sale to or union with the combination, it puts a restraint upon interstate commerce and monopolizes or attempts to monopolize a part of that commerce, in a sense that violates the Anti-Trust Act.

VII.

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It is no excuse that the members of a conspiracy did not intend to violate the Anti-Trust Act. It is the effect of the acts of the defendants and their co-conspirators that you must consider and not the intent or motive which they may have had in performing said acts. It is not, therefore, relevant to the issues in this case whether or not the defendants intended to injure the plaintiff, but the question is whether the plaintiff has been injured by the unlawful acts of the defendants.

Intent may be inferred.

7581

The acquiring or taking over of the fruits of an unlawful conspiracy is of itself prima facie evidence of the intent of those who have acquired those fruits to continue the conspiracy.

VIII.

It is conceded by defendants' counsel that there was an unlawful conspiracy to monopolize the powder trade of the United States which existed previous to June, 1904. It is for you to say whether such conspiracy assumed any different form before or after its abandonment in 1904, and if so whether the policies and purpose of restraining trade in explosives in the United States was continued by the conspirators or members of the as-

7582

Plaintiff's Requests to Charge

sociation or any two or more thereof in a new form. The mere change of form of the conspiracy from an unincorporated to an incorporated form, would not relieve the persons engaged in the conspiracy from the responsibility of their acts in violation of the laws against combinations and conspiracies in restraint of trade.

IX.

7583

This being a civil action, the rules which require that you should be convinced of the responsibility or liability of the defendants either on account of their unlawful acts or on account of the injury which the plaintiff may have suffered beyond a reasonable doubt do not apply. A fair preponderance of the evidence is sufficient in actions of this character.

X.

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In determining the purpose of the defendants to monopolize or restrain the powder trade, you may consider the purpose of inducing consumers of explosives to enter into contracts for the purchase of explosives from the defendants. You should consider the nature of these contracts, the general scope and terms thereof, and whether the same constitute a general system. If you find that these contracts were sufficiently numerous to indicate a general purpose to induce consumers of explosives over a wide area to withdraw their trade from competition, then you should find that such contracts constitute an attempt to monopolize the powder trade by eliminating competition.

If you find that numerous contracts were made with numerous consumers of explosives prior to the time of the organization of the defendants the E. I. du Pont de Nemours Powder Company, and that

Plaintiff's Requests to Charge

7585

such contracts were acquired and taken over by said defendants after its organization, and that such contracts have been renewed from time to time as they were about to expire, you are entitled to consider such facts as evidence of a continuing conspiracy for the purpose of monopolizing the trade in explosives. It is for you to determine what was the purpose and effect of these contracts regardless of any interpretation that may have been put upon the making of said contracts by the defendants or any of the co-conspirators.

7586

XI.

You are instructed that while it may be true that in small corporations the holding of less than a majority of the stock would not necessarily amount to control, you may consider whether the testimony in this case shows that where such minority was compact and held by a few stockholders who were acting unitedly as to policies and purpose, such minority did result in actual control of the affairs of the corporation.

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You may also take into consideration the fact, if you so find from the evidence, that the minority interests were held by persons who were in a situation to exercise considerable influence through their other associations or interests with the majority stockholders in a corporation. It is for you to consider whether it is possible in this manner that a few persons holding a minority of the stock, but who are in active attendance at stockholders' meetings and in conducting its affairs, may exercise control by reason of the necessary community of interest which exists between them.

It may be that no more effective method could well be devised for unifying the various interests

7588

Plaintiff's Requests to Charge

engaged in the powder trade than by combining them in one corporation, the stocks of which were held by a few persons who were in active control of the policies and management of the affairs of such corporation. Such unification, unexplained, alone testifies to a presumption of an attempt to dominate and control the powder interests.

XII.

7589

You are instructed that it is the policy of the law to encourage men to engage in business for themselves and that business or trade combinations which may temporarily or even permanently reduce the price of an article traded in or manufactured, by reducing the expenses inseparable from the running of many different companies for the same purpose, are not thereby excused or to be absolved from the condemnation of the anti-trust laws. Trade or commerce in those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein and who might be unable to readjust themselves to their altered surroundings. Mere reduction of price of the commodity dealt in might be dearly paid for by the ruin of such owners and the absorption or control over one commodity by an all-powerful combination of capital.

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XIII.

You have a right to consider the evidence not only with reference to acts which relate directly to the plaintiff but also in order to ascertain the general policy of the defendants and to make that policy clear to your minds, you have a right to consider similar acts of the defendants in connection with other persons besides the plaintiff, which may

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7591

show a general intent or policy on the part of the defendants to restrain trade and create a monopoly.

XIV.

You are instructed that it is not necessary that the acts which injured the plaintiff and from which it suffered damage were aimed specifically at the plaintiff. The question is whether injuries resulted as the natural and proximate consequence of the unlawful acts of the defendants or any of their co-conspirators. It is enough if such acts were prohibited or made unlawful by the Sherman Act. Any injury which resulted to the plaintiff by means of anything forbidden or declared to be unlawful by that act should be compensated for by you even though it should appear that the plaintiff was not in contemplation by the defendants at all.

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XV.

You are instructed that it is your duty to ascertain and find the amount of actual damages which the plaintiff may have suffered. You have nothing to do with the matter of multiplication of such damages as required by the Seventh sections of the Sherman Act. You are therefore instructed that you are not to be influenced in arriving at a determination of the amount of actual damages suffered by the plaintiff by the fact that such damages as you may return a verdict for are to be multiplied three-fold. The multiplication of the damages which may be returned by you as your verdict is a right which belongs to the plaintiff and is not to be abridged in any manner whatever.

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XVI.

In arriving at the amount of damages which the

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plaintiff has sustained you may take into consideration the value of the plant and the sum received for the same on its sale. In arriving at this result you may take into consideration the cost of the plant, its up-keep from the time of its construction, and the general facts and circumstances which would indicate its fair value at the time of its sale.

XVII.

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Plaintiff claims damages on account of the loss of its business and good-will. You are instructed that good-will is the advantage of anything that is acquired beyond the mere value of the physical property, and, particularly, in consequence of the general public patronage and encouragement which the enterprise receives from constant or habitual customers or from other accidental circumstances.

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You are instructed that the value of the plaintiff's plant is not necessarily limited to what is actually invested in its physical properties, but in estimating the value of the plant you may consider its earning capacity; and the value of its good will in valuing which you may take into consideration its earning capacity.

XVIII.

You are instructed that if you find that the plaintiff has lost profits by reason of the acts of the defendants or any of their co-conspirators you should find the amount of such losses, and while you are not permitted to indulge in mere speculation or guesses, you are entitled to take into consideration all the facts and evidence which have been submitted to you for the purpose of forming a rational basis for a reasonably correct estimate of the amount of damages which the plaintiff may

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have suffered by the loss of anticipated profits in conducting its business. You are therefore instructed that the law does not require proof of loss of profits with absolute certainty. All that is necessary to prove is that the profits claimed were reasonably certain to have been realized but for the wrongful acts of the defendants, or that such losses were the natural and proximate consequences of the acts of the defendants and their co-conspirators. While the measure of damages in such cases may not be susceptible of absolute and positive determination, you have a right, as I have stated, to consider all the surrounding circumstances and facts for the purpose of forming an estimate of the probable losses from this source.

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The plaintiff claims loss of profits on goods actually manufactured and sold. Also loss of profits on account of goods which it would have manufactured and sold had it been permitted, but for the unlawful acts of the defendants, to operate its mills at the normal capacity thereof. If you shall find that the plaintiff was prevented from making a reasonable and fair profit upon the powder which it actually manufactured and sold, or which it might have manufactured and sold, by reason of anything which the defendants or any of the co-conspirators did in carrying out their purpose and policy to monopolize and restrain the powder trade, then you are instructed that the plaintiff is entitled to recover such losses as you can reasonably determine from the evidence that it sustained for the period from September 19, 1905, to September 19, 1908.

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XIX.

You are instructed that you may allow interest on all damages which you may find the plaintiff

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Plaintiff's Requests to Charge

has actually suffered, the same to be calculated at the rate of 6 per cent per annum, from such date as you shall determine such loss was sustained down to the date when you render your verdict.

XX.

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You are instructed that an employe of a corporation or person who is engaged in an unlawful combination to restrain trade and commerce is not a co-conspirator unless the acts independently and beyond the scope of authority which is conferred upon him by his employers. If, therefore, you find that R. S. Waddell was at any time acting as an employe of one of the defendants or any of their co-conspirators, during the period while they were engaged in the performance of any unlawful act, you are not thereby to conclude that the said Waddell was a co-conspirator in the performance of any of said acts.

XXI.

7602

You are instructed that the acts done by these defendants must be judged irrespective of any acts which may have been done by the plaintiff or any officer or person connected therewith. The right of an individual to enter into business is nowhere restricted by the law;

And you are further instructed that R. S. Waddell had a right to go out and build up an independent business of his own. The question involved in this case is whether the defendants themselves have violated the anti-trust laws of the United States. And if you find that they have violated said laws then they cannot excuse themselves because it may appear that some other person or corporation against whom their acts were directed may have

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7603

been guilty of the same unlawful acts. The anti-trust act has its own penalties for violations of its provisions. It contains nothing that sanctions the argument that an offender against it shall be deprived of redress from a civil injury on the plea that he has been guilty of an infraction of that act. The act gives a remedy to any person injured in his business or property by virtue of any of the things prohibited by the act and does not suggest that such person may invoke unlawful acts of others as a defense to its liability.

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You may disregard all statements by witnesses or counsel in this case with reference to any violations of the anti-trust act by the plaintiff or by Mr. Waddell in determining the guilt of the defendants and should not allow any such evidence or statements to in any wise influence your judgment in considering the responsibility of the defendants to the plaintiff.

XXII.

If you find that R. S. Waddell, previous to the time when he organized the plaintiff, was shadowed by detectives you may consider all the facts and circumstances surrounding the employment of such detectives and what the purpose was; and if you find the purpose of the employment of such detectives was to interfere with the said Waddell in securing a location for the erection of a plant for manufacturing explosives, and that such purpose was a part of the plans of the defendants to prevent the entrance of an independent competitor into the powder trade, then you are instructed that such purpose was an unlawful and wrongful purpose on the part of the defendants, to injure the plaintiff. Shadowing by detectives may be suggestive of criminality and it may be fatal to public esteem and

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productive of public contempt and ridicule and may be actionable in itself. The effect of shadowing by detectives may be directly to harrass the person shadowed and to embarrass him in his business.

The injury to the plaintiff by reason of the employment of detectives may not have been direct, it may have been indirect, and one of the elements of the general scheme employed by the defendants to carry out their purpose to control and monopolize the powder trade.

7607

XXIII. You are instructed that the employment of miners or other persons to circulate among the users of black blasting powder in coal mining operations to cause them to become dissatisfied with or to object to the use of powder manufactured by the plaintiff and to make protests and complaints to their employers against the use in their mining operations of powder manufactured by the plaintiff, is evidence of the purpose and policy of the defendants to drive the plaintiff out of business.

XXIV.

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You are instructed that efforts to employ railroad agents or employees to divulge information concerning consignments which might from time to time be made by the plaintiff to its various customers is evidence of the purpose and policy of the defendants to drive the plaintiff out of business and is therefore an act prohibited by the Anti-Trust Act.

XXV.

If you find that the defendants or any of their employers made or encouraged false statements as to the quality of the powder produced by the plaintiff, that act in itself would be evidence of a general scheme or policy to injure the plaintiff. It is

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for you to determine whether such false statements as to quality were made with a view to such general plan. Sometimes even acts which may not be unlawful in themselves may become unlawful when they are confined so as to form a part of a general scheme, the scheme itself being unlawful.

XXVI.

If you find that the defendants made prices which were applicable to certain districts where there was competition and which were different from prices which obtained in other districts in which no competition prevailed, you are instructed that this is strong evidence of the purpose of the defendants to restrain and monopolize the powder trade.

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You are further instructed that the policy of making prices which were applicable only in districts where competitive conditions prevailed is a policy which it is difficult if not impossible to contend with and is regarded as one of the most effective weapons which can be used in the monopolizing of trade within a given territory.

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XXVII.

If you shall find that the plaintiff is entitled to recover damages, in arriving at the amount which in your judgment he is entitled to recover you may separate the items of damages which under the instructions of the Court you award him, under the following headings, and specify the damages, if any, you award under each of said headings:

1st. The loss, if any, sustained by the plaintiff in its investment in its manufacturing plant.

2d. Loss to the plaintiff on the good will of its business.

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Verdict

3d. Loss to the plaintiff of profits on powder manufactured and actually sold.

4th. Loss to the plaintiff in profits on powder which it would have been able to sell but for the acts of the defendants, based on the normal manufacturing capacity of its plant.

5th. Interest on the above four items to the date of rendering a verdict.

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Thereupon the jury retired in charge of James E. Van Horne, bailiff, at 2:00 P. M. to consider of their verdict.

Minutes of the Court of February 25, 1914:

And the jury having considered of their verdict, return again into Court, at 5.00 P. M., and by their foreman say: That as to the defendant, the E. I. du Pont de Nemours Powder Company, they
7614 find no cause of action. That pursuant to directions by the Court they also find no cause of action as to Eastern Dynamite Company and International Smokeless Powder and Chemical Company. And so say they all.

Jury discharged.

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